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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and
Albuquerque, NM, see announcement on the inside cover
of this issue.

FEDERAL REGISTER



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ALBUQUERQUE, NM

- WHEN:** December 8, at 9:00 am
- WHERE:** University of New Mexico
Continuing Education Bldg., Room 1
1634 University Blvd., NE
Albuquerque, NM
- RESERVATIONS:** Julie Stone
505-768-3532

WASHINGTON, DC

- WHEN:** November 30, at 9:00 am
- WHERE:** Office of the Federal Register
Seventh Floor Conference Room
800 North Capitol Street, NW, Washington, DC
- RESERVATIONS:** 202-523-4534

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Law Numbers and the Federal Register Table of Contents
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Proclamation 6504 of November 6, 1992

The President

SPAR Anniversary Week, 1992

By the President of the United States of America

A Proclamation

During World War II, recognizing the military's urgent need for personnel and both the ability and the desire of women to contribute to the total Allied effort, the United States Congress passed legislation establishing the Coast Guard Women's Reserve. The Coast Guard Women's Reserve was created as a sister service to the Women's Army Auxiliary Corps (WACS), Women Accepted for Voluntary Emergency Service (WAVES) in the Naval Reserve, and Women Marines.

The first director of the Coast Guard Women's Reserve, Captain Dorothy C. Stratton, coined its acronym, SPAR, from the Latin and English translations of the Coast Guard motto, *Semper Paratus!* (Always Ready!). Women from throughout the United States and from all walks of life were recruited as SPARS, becoming the first women to be trained at a United States service academy, the United States Coast Guard Academy. Throughout the course of the war, they performed admirably as executive officers, division heads, watch officers, coxswains, gunner's mates, and machinist's mates—to name but a few of their important roles.

Following World War II, SPARS were integrated into the Organized Reserve Training Program. Many served with distinction in highly specialized jobs during the Korean and Vietnam conflicts, and today, a half-century after the founding of the Women's Reserve, Coast Guard women serve in all phases of Coast Guard operations. We note with special admiration and pride the contributions of Coast Guard women during Operations Desert Shield/Desert Storm.

In honor of the dedicated service of women in the United States Coast Guard, the Congress, by H.R. 5617, has designated the week of November 17 through November 23, 1992, as "SPAR Anniversary Week" and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 17 through November 23, 1992, as SPAR Anniversary Week. I encourage the Governors of the States and the Commonwealth of Puerto Rico and officials of other areas subject to the jurisdiction of the United States to provide for the observance of this week. I also invite all Americans to utilize this opportunity to learn more about the history and continuing contributions of women in the United States Coast Guard.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-27615

Filed 11-9-92; 3:55 p.m.]

Billing code 3195-01-M

Presidential Documents

Proclamation 6505 of November 9, 1992

National Military Families Recognition Day, 1992

By the President of the United States of America

A Proclamation

The strength of the American family is the strength of America itself, for the family is the primary institution to shape our citizens and leaders and to ensure that our most cherished ideals are passed from one generation to the next. On this occasion we offer a special salute to America's military families, who provide so much love and support to our courageous men and women in uniform. The patriotism and sacrifices of these families have uniquely fortified our Nation's military and, in so doing, helped the United States to remain the freest, strongest, and most prosperous country in the world.

While America's military families trace their roots to a variety of cultural, ethnic, and religious backgrounds, they share a profound sense of duty and an equally strong love of country. These families are also united by the singular challenges of military life, from frequent relocations to long periods of separation and worry. By standing steadfast in support of their members in uniform and of each other, military families provide inspiring examples of generosity, courage, and pride. Who can forget the tremendous public show of support for our troops as they fought to liberate Kuwait and to turn back aggression in the Persian Gulf—support led by the spouses, children, parents, grandparents, and siblings of our active duty and Reserve forces.

This year has seen new challenges for our service members and their families as many American military personnel have deployed around the globe in support of urgent humanitarian missions and long-standing defense interests. The end of the Cold War has also presented challenges as we work to restructure our defense forces and to maintain an efficient, mobile, and effective military capacity. Yet, just as they have met every challenge in the past, America's military families continue to face these and other developments with resourcefulness, resilience, and pride. Each of them deserves our admiration and support.

The Congress, by House Joint Resolution 503, has designated November 23, 1992, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 23, 1992, as National Military Families Recognition Day. I urge all Americans to join in honoring United States military families around the world, who do so much in support of the men and women who defend our freedom and security. I also call on Federal, State, and local government officials and private organizations to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George H. W. Bush

[FR Doc. 92-27616

Filed 11-9-92; 3:56 pm]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 57, No. 219

Thursday, November 12, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 1023

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy today publishes a final rule amending its Rules of Procedure codified at 10 CFR part 1023. The rule establishes procedures for the submission and consideration of applications for attorney's fees under the Equal Access to Justice Act, 5 U.S.C. 504, by eligible parties who have prevailed before the Energy Board of Contract Appeals on appeals from decisions of contracting officers pursuant to section 6 of the Contract Disputes Act of 1978, 41 U.S.C. 605, as provided in section 8 of the Act, 41 U.S.C. 607.

EFFECTIVE DATE: This rule will take effect on December 14, 1992.

FOR FURTHER INFORMATION CONTACT: C. Joseph Carroll, Department of Energy, Board of Contract Appeals, (703) 235-2700.

SUPPLEMENTARY INFORMATION:

I. Analysis of Final Rule

A. Background

B. Discussion of Public Comments

II. Procedural Requirements

A. Review Under Executive Order 12291

B. Review Under Paperwork Reduction Act

C. Review Under Regulatory Flexibility Act

D. Review Under National Environmental Policy Act

E. Review Under Executive Order 12612

F. Review Under Executive Order 12778

G. Review Under Equal Access to Justice Act, 5 U.S.C. 504(c)(1)

I. Analysis of Final Rule

A. Background

This final rule adopts, with minor modifications, the Model Rules for

Implementation of the Equal Access to Justice Act in Agency Proceedings issued by the Administrative Conference of the United States on May 6, 1986, and appearing at 1 CFR part 315. Prior to the enactment of Public Law 99-80 and Public Law 99-509, the Equal Access to Justice Act (EAJA) did not apply to proceedings before boards of contract appeals, and, thus, the Department of Energy had no need to have rules governing applications for attorney's fees under the EAJA that applied to its board of contract appeals. This final rule reflects the changes in the law made by Public Law 99-80 and Public Law 99-509.

B. Discussion of Public Comments

No public comments were received in response to the proposed rule published in the *Federal Register* on September 3, 1992 (57 FR 40345).

II. Procedural Requirements

A. Review Under Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and has been determined not to be a "major rule" because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based industries to compete in domestic export markets.

B. Review Under Paperwork Reduction Act

This final rule has been reviewed under the Paperwork Reduction Act, 44 U.S.C. 3501, and has been determined to be exempt from its requirements by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

C. Review Under Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), which requires

preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

D. Review Under National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), Council of Environmental Quality guidelines (40 CFR parts 1500-1508), and the Department of Energy environmental guidelines (10 CFR part 1021), and has been determined not to represent a major federal action having a significant impact on the human environment. Therefore, no environmental impact statement has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. This final rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Therefore, the preparation of a federalism assessment is not required.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable

effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect and will not have any effect on existing federal laws or regulations; it will apply only to EAJA applications filed with the Board after its effective date, and, thus, will have no retroactive effect. DOE certifies that this final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

G. Review Under Equal Access To Justice Act, 5 U.S.C. 504(c)(1)

In accordance with the requirements of 5 U.S.C. 504(c)(1), the Department of Energy Board of Contract Appeals has consulted with the Office of the Chairman of the Administrative Conference of the United States concerning this rule.

List of Subjects in 10 CFR Part 1023

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, DC on November 5, 1992.

E. Barclay Van Doren,
Chairman, Board of Contract Appeals.

For the reasons set forth in the Preamble, part 1023 of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 1023—CONTRACT APPEALS

1. A new subpart C is added as set forth below:

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

General Provisions

Sec.	
1023.300	Definitions.
1023.301	Purpose of these rules.
1023.302	When the Act applies.
1023.303	Proceedings covered.
1023.304	Eligibility of applicants.
1023.305	Standards for awards.
1023.306	Allowable fees and expenses.
1023.307	[Reserved]
1023.308	Awards against other agencies.

Information Required from Applicants

1023.310	Contents of application—overview.
1023.311	Net worth exhibit.
1023.312	Documentation of fees and expenses.
1023.313	When an application may be filed.

Procedures for Considering Applications

1023.320	Filing and service documents.
1023.321	Answer to application.

Sec.	
1023.322	Reply.
1023.323	Comments by other parties.
1023.324	Settlement.
1023.325	Further proceedings.
1023.326	Board decision.
1023.327	Reconsideration.
1023.328	Judicial review.
1023.329	Payment of award.

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

Authority: Sec. 644, Title VI, Pub. L. 95-91, 91 Stat. 599; 5 U.S.C. 504.

General Provisions

§ 1023.300 Definitions.

For purposes of these procedures: *Agency Counsel* means the attorney representing the Department or other agency in a proceeding under this subpart.

Board means the Department of Energy Board of Contract Appeals.

Covered Proceeding means an underlying proceeding as specified by paragraph (a) of § 1023.303.

Days means calendar days.

§ 1023.301 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to covered proceedings. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. These procedures describe the parties eligible for awards and covered Board proceedings. They also explain how to apply for awards and the procedures and standards that the Board will use to make them.

§ 1023.302 When the Act applies.

The Act applies to any covered proceeding pending or commenced before the Board on or after August 5, 1985. It also applies to any such proceeding commenced before the Board on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 1023.310 of this subpart, has been filed with the Board within 30 days after August 5, 1985, and to any such proceeding pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1023.303 Proceedings covered.

(a) The Act applies to appeals from decisions of contracting officers made

pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1023.304 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the covered proceeding for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly

or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Board determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the Board may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1023.305 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the covered proceeding, the action or failure to act by the agency upon which the covered proceeding is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the agency's position was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1023.306 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys or expert witnesses even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney under these rules may exceed \$75 per hour. No award to compensate an expert witness may exceed the highest rate at which the respondent agency or agencies pay expert witnesses. However, an award may also include the reasonable expenses of the attorney or witness as a separate item, if the attorney or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney or expert witness, the Board shall consider the following:

(1) If the attorney or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 1023.307 [Reserved]

§ 1023.308 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States Government that participates in a proceeding before the Board and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Information Required From Applicants

§ 1023.310 Contents of application—overview.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). The applicant shall attach a net worth exhibit that satisfies the requirements of section 1023.311. However, an applicant

may omit this statement and forego the attachment of the net worth exhibit if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought. The applicant must document fees and expenses as required in § 1023.312.

(d) The application may also include any other matters that the applicant wishes the Board to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1023.311 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1023.304(f) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding administrative judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion directly to the presiding administrative judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion for a protective order setting forth the ground therefor. A protective order may be granted for good cause shown.

§ 1023.312 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate, itemized statement shall be submitted for each professional firm or individual whose services are covered by the application. The statement should show the hours spent in connection with the Contract Disputes Act appeal by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding administrative judge may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed pursuant to § 1023.306 of this subpart.

§ 1023.313 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, or, with permission of the Board for good cause shown, when the applicant has prevailed in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) For purposes of paragraph (a) of this section, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable.

(c) If reconsideration of a decision is sought as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of a covered proceeding to a court, no decision on an application for fees and other expenses in connection with that proceeding shall be made until a final and unreviewable decision is rendered by the court on that appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications**§ 1023.320 Filing and service of documents.**

Any application for an award, or other pleading or document relating to

an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the underlying proceeding, except as provided in § 1023.311(b) for confidential financial information.

§ 1023.321 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Further extensions may be granted by the presiding administrative judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.322 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.323 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1023.324 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the

application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1023.325 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or, on his or her own initiative, the presiding administrative judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole, including the contracting officer Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, which is made in the covered proceeding for which fees and other expenses are sought.

(b) A request that the presiding administrative judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1023.326 Board decision.

The Board shall issue its decision on the application as expeditiously as is practicable after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special

circumstances make the award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1023.327 Reconsideration.

Either party may seek reconsideration of the decision on the fee application in accordance with 10 CFR 1023.20, Rule 27.

§ 1023.328 Judicial review.

Judicial review of a final Board decision on an application for an award may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1023.329 Payment of award.

An applicant seeking payment of an award shall submit to agency counsel a copy of the Board's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Agency counsel will forward the submission to the appropriate disbursing official. The agency will pay the amount awarded to the applicant within 60 days.

[FR Doc. 92-27387 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R-0780; Reg. Z]

Depository Institutions Disaster Relief Act of 1992; Truth in Lending Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Order; temporary exceptions.

SUMMARY: The Depository Institutions Disaster Relief Act of 1992 temporarily authorizes the Board to take immediate action to make exceptions to the Truth in Lending Act and Regulation Z (which implements the Act) for transactions in an area the President has declared to be a major disaster area. In accordance with this law, the Board is granting temporary relief from certain provisions of Regulation Z governing waivers by consumers of the right to rescind certain home-secured loans, so that borrowers in disaster affected communities in Florida, Hawaii, Louisiana, and California can gain easier access to loan funds for emergency purposes. The relief from Regulation Z provides that a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency for

purposes of Regulation Z, and the use of preprinted forms for consumers to waive the right of rescission is permitted; provided that the home securing the extension of credit is located in the disaster area. A consumer must still provide the creditor with a signed, dated waiver statement that a personal financial emergency exists.

DATES: This order is effective as of November 12, 1992, and expires for areas affected on the specific dates set forth in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Senior Attorney (202/452-2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In May 1992, civil unrest occurred in Los Angeles and in August 1992, Hurricanes Andrew and Iniki devastated areas in Florida, Louisiana, and Hawaii. Subsequently, the President declared the affected communities major disaster areas. To facilitate recovery from major disasters, the Depository Institutions Disaster Relief Act of 1992 (DIDRA), Pub. L. 102-485, 106 Stat. 2771 (1992), was enacted into law on October 23, 1992. Section 3 of DIDRA authorizes the Board, until April 23, 1993, to take immediate action to make temporary exceptions to the Truth in Lending Act (TILA) and Regulation Z for transactions in an area the President has declared to be a major disaster area, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170.

Under the TILA and Regulation Z, with some exceptions, a consumer has the right to cancel a credit obligation that is secured by the consumer's principal dwelling. Because of the risk of loss of the consumer's home in the event of default, there is a mandatory waiting period of three business days before funds can be disbursed in order to give consumers an opportunity to reflect on the loan terms and to elect to cancel the transaction.

A consumer may modify or waive this right of rescission to meet a bona fide personal financial emergency. Under Regulation Z, 12 CFR 226.15(e) and 226.23(e), the consumer must provide the creditor a written, signed and dated waiver statement that describes the emergency. The waiver statement may not be executed on a preprinted form.

Through discussions with various sources about the major disaster areas noted above, and based on the Board's experience in monitoring compliance with Regulation Z, the Board has determined that the three-day waiting period that provides a consumer the opportunity to rescind a loan, and the restriction on the use of a preprinted form to execute a waiver of the right of rescission, may disadvantage borrowers in the major disaster areas who are in immediate need of the loan proceeds. Therefore, the Board believes that granting relief in these situations can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

Accordingly, pursuant to its authority under section 3 of DIDRA, provided that the dwelling securing the extension of credit is located in an area of Florida, Louisiana, Hawaii, or California that was declared a major disaster by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, as a result of Hurricanes Andrew¹ or Iniki² or the civil unrest in Los Angeles in May 1992,³ the Board hereby:

(1) Determines that a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency for purposes of §§ 226.15(e) and 226.23(e) of Regulation Z and

(2) Grants relief from §§ 226.15(e) and 226.23(e) of Regulation Z to permit the use of preprinted forms for consumers to waive the right of rescission. The Board notes that consumers must still provide creditors with signed, dated waiver statements in these transactions.

As required by section 3 of DIDRA, the relief from Regulation Z provided in this Order shall expire on:

- (1) May 2, 1993, for areas affected by the civil unrest in Los Angeles;
- (2) August 24, 1993, for areas affected by Hurricane Andrew in Florida;
- (3) August 26, 1993, for areas affected by Hurricane Andrew in Louisiana;
- (4) September 12, 1993, for areas affected by Hurricane Iniki in Hawaii.

¹ Florida counties: Broward, Collier, Dade, Monroe. Louisiana parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, West Feliciana.

² Hawaiian counties: Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, Oahu.

³ Los Angeles County.

By order of the Board of Governors of the Federal Reserve System, dated November 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-27344 Filed 11-10-92; 8:45 am]

BILLING CODE 6210-10-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-181-AD; Amendment 39-8414; AD 92-21-51 R1]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document revises and publishes in the *Federal Register* an amendment adopting Airworthiness Directive (AD) T92-21-51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 747 series airplanes by individual telegrams. This AD supersedes two previously-issued AD's that concern inspections of nacelle strut midspar fuse pins. This AD requires repetitive inspections for cracks in "old style" fuse pins, and replacement, if necessary; repetitive inspections of "new style" fuse pins to detect cracks and corrosion, and rework or replacement, if necessary; and repetitive detailed visual inspections of the midspar fitting lugs to detect cracks, and repair or replacement, if necessary. This amendment is prompted by several reports of fatigue cracks in the fuse pins installed on certain airplanes. The actions specified by this AD are intended to prevent failure of the engine support structure and the inability of the strut to carry required engine support loads. This amendment revises the previously-issued telegraphic AD by correcting inadvertent typographical errors.

DATES: Effective November 27, 1992. Portions of this amendment were effective earlier to recipients of telegraphic AD T92-21-51, issued October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the *Federal Register* as of November 27, 1992.

Comments for inclusion in the Rules Docket must be received on or before January 11, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-181-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the *Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Tim Backman, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On October 8, 1992, the FAA issued telegraphic AD T92-21-51, applicable to certain Boeing Model 747 series airplanes, which supersedes both AD 86-22-01 [amendment 39-5437 (51 FR 36002, October 8, 1986)] and AD 91-09-01 [amendment 39-6970 (56 FR 18510, April 23, 1991)].

The FAA previously issued AD 86-22-01 on October 1, 1986. That AD was applicable to certain Boeing Model 747 series airplanes, and required ultrasonic or eddy current inspections to detect cracking in "old style" nacelle strut midspar fuse pins, and replacement, if necessary. Installation of "new style" fuse pins was provided in that AD as terminating action for the repetitive inspection requirement. That action was prompted by a report of a complete failure of an old style nacelle strut midspar attach fuse pin.

Additionally, the FAA previously issued AD 91-09-01 on April 4, 1991. That AD was applicable to certain Boeing Model 747-100, -200, and -300 series airplanes, and required a one-time inspection to confirm the application of primer and corrosion preventive compound on certain new style nacelle strut midspar fuse pins, and replacement of the fuse pin if corrosion or cracks were found. That action was prompted by a report of a 2.55-inch long crack in a new style nacelle strut midspar fuse pin.

The actions required by those AD's were intended to prevent failure of the pin and the inability of the strut to carry required engine support loads.

Since the issuance of those two AD's, the FAA has received several reports of fatigue cracks initiating at corrosion

sites in the new style fuse pins on airplanes equipped with Pratt and Whitney or Rolls Royce series engines. The FAA has determined that:

(1) Since cracks have continued to be found in new style fuse pins, installation of new style fuse pins, as specified in AD 86-22-01, cannot adequately ensure the safety of the fleet. Therefore, installation of new style fuse pins should not terminate the requirement for repetitive inspections of the pins. In addition, the eddy current inspection required by that AD does not adequately detect cracks in the old style nacelle strut midspar fuse pins. Therefore, the option of performing an eddy current inspection must be removed.

(2) Since repetitive inspections are not required by AD 91-09-01, the one-time inspection required by that AD cannot adequately detect corrosion and cracking of new style fuse pins to ensure an acceptable level of safety.

In addition, results of a recent fuse pin inspection revealed a crack in a midspar fitting lug. The cause of the cracking has not yet been determined.

Fatigue cracks in these fuse pins or cracks in these lugs, if not detected and corrected, could result in failure of the engine support structure and the inability of the strut to carry required engine support loads.

It should be noted that no evidence currently exists that this type of cracking was responsible for either the China Air accident, which occurred in December 1991, or the El Al accident in Amsterdam, which occurred in October 1992, both of which involved Model 747 series airplanes. Theoretical accident scenarios include failed fuse pins or lugs as a possible cause.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992, that describes procedures for inspection of new style nacelle strut midspar fuse pins to detect cracks and corrosion, and rework or replacement of the pins, if necessary.

This AD also references Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992, which the FAA has reviewed and approved. This service bulletin describes procedures for repetitive ultrasonic inspections to detect cracks in the old style nacelle strut midspar fuse pins, and replacement of cracked fuse pins with new style pins. In addition, this service bulletin describes procedures for inspection of the new midspar fuse pins for the presence of primer and corrosion pits.

Since the unsafe condition described is likely to exist or develop on other

airplanes of the same type design, the FAA issued Telegraphic AD T92-21-51 to prevent failure of the nacelle strut midspar fuse pins and midspar fitting lugs. The AD supersedes AD 86-22-01 to require repetitive ultrasonic inspections for cracks in the old style nacelle strut midspar fuse pins, and replacement of the pins, if necessary. The AD also removes the optional terminating action specified in AD 86-22-01, which terminated the requirement for the repetitive inspections of the fuse pins if new style fuse pins are installed. The AD also supersedes AD 91-09-01 to require repetitive inspections of the new style nacelle strut midspar fuse pins to detect cracks and corrosion, and rework or replacement of the pins, if necessary. These actions are required to be accomplished in accordance with the service bulletins described previously.

The AD also requires repetitive detailed visual inspections of the midspar fitting lugs to detect cracks, and repair or replacement of any cracked lugs found.

In addition, the AD requires that operators submit a written report to the FAA of all findings of cracks or corrosion as a result of initial inspections.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on October 8, 1992, to all known U.S. owners and operators of certain Boeing Model 747 series airplanes. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

The final rule has been revised to correct inadvertent typographical errors that appeared in the telegraphic AD, as follows:

1. An inappropriate reference to "paragraph (a)(4)" has been removed from paragraph (a) of the final rule.
2. References to paragraphs (b)(4) and (b)(5), which were omitted inadvertently from paragraph (b) of the telegraphic AD, are included in the final rule.
3. A reference to "paragraph (b)(5)," which appeared in paragraph (b)(2) of the telegraphic AD, has been changed to read, "paragraph (b)(4)."
4. A reference to paragraph (c)(3), which was omitted inadvertently from paragraph (c) of the telegraphic AD, has been included in the final rule.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-181-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action

involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-5437 (51 FR 36002, October 8, 1986) and amendment 39-6970 (56 FR 18510, April 23, 1991), and by adding a new airworthiness directive (AD), to read as follows:

92-21-51 R1. Boeing: Amendment 39-8414.

Docket 92-NM-181-AD. Supersedes AD 86-22-01, Amendment 39-5437; and AD 91-09-01, Amendment 39-6970.

Applicability: Model 747-100, -200, -300, and -400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nacelle strut midspar fuse pins and midspar fitting lugs, accomplish the following:

- (a) For airplanes equipped with old style nacelle strut midspar fuse pins, as listed in Boeing Service Bulletin 747-54-2063, Revision 4, dated June 6, 1986: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

- (1) Within 30 days after the effective date of this AD, accomplish the following:

- (i) Perform an ultrasonic inspection to detect cracks in the old style nacelle strut midspar fuse pins in accordance with Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992.

- (ii) Perform a detailed visual inspection of the midspar fitting lugs to detect cracks; and prior to further flight, repair or replace any cracked lugs found, in accordance with the Structural Repair Manual.

Note 1: Operators are encouraged to inspect first those airplanes that have a high

frequency of maximum takeoff weight/maximum takeoff thrust.

Note 2: Ultrasonic inspections performed in accordance with Boeing Service Bulletin 747-54-2063, Revision 4, dated June 6, 1986; or Revision 5, dated September 24, 1987; or Revision 6, dated July 20, 1989; or Revision 7, dated March 29, 1990; or Revision 8, dated May 9, 1991; are equivalent to those performed in accordance with Revision 9, dated April 23, 1992.

(2) Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings, in accordance with Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992.

(3) If a cracked fuse pin is found, prior to further flight, replace it with a new style nacelle strut midspar fuse pin in accordance with Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992. Thereafter, for airplanes equipped with Pratt and Whitney or Rolls Royce series engines, perform the repetitive inspections required by paragraph (b) of this AD.

(b) For Model 747-100, -200, -300, and -400 series airplanes, equipped with Pratt and Whitney or Rolls Royce series engines and new style nacelle strut midspar fuse pins: Accomplish paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this AD.

(1) Inspect each new style fuse pin to detect cracks and corrosion in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992, at the times specified in paragraphs (b)(1)(i) or (b)(1)(ii) of this AD, as applicable. In addition, at the times specified in paragraphs (b)(1)(i) or (b)(1)(ii) of this AD, as applicable, perform a detailed visual inspection of the midspar fitting lugs to detect cracks; and prior to further flight, repair or replace any cracked lugs found, in accordance with the Structural Repair Manual.

(i) For engine numbers 2 and 3, inspect prior to the accumulation of 5,000 total landings on the new style nacelle strut midspar fuse pins, or within 30 days after the effective date of this AD, whichever occurs later.

(ii) For engine numbers 1 and 4, inspect prior to the accumulation of 5,000 total landings on the new style nacelle strut midspar fuse pins, or within 60 days after the effective date of this AD, whichever occurs later.

(2) Except as provided by paragraph (b)(4) of this AD, repeat the inspections required by paragraph (b) of this AD thereafter at intervals not to exceed 1,000 landings in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992.

(3) If cracks are found, prior to further flight, replace the pin with a new pin of the same type in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD.

(4) If "light" corrosion is found, prior to further flight, remove the corrosion in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992. Thereafter, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 500 landings until the pin is reworked

or replaced with a new pin of the same type. "Light" corrosion is characterized by discoloration or pitting to a depth of not more than 0.001 inch. This type of corrosion can normally be removed by light hand sanding.

(5) If corrosion beyond that defined as "light" is found, prior to the accumulation of 15 additional landings since the corrosion was found, rework or replace the pin with a new pin of the same type, in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD.

(c) Within 5 days after accomplishing the initial inspections on each affected airplane, as required by paragraphs (a)(1) and (b)(1) of this AD, submit a written report that includes all of the information and findings specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) The total number of fuse pins found with corrosion but no cracks, including the type of fuse pins (old or new style), part number of fuse pins, fuse pin length, and engine model.

(2) The total number of fuse pins found with cracks but no corrosion, including the type of fuse pins (old or new style), part number of fuse pins, fuse pin length, and engine model.

(3) The total number of fuse pins found with corrosion and cracks, including the type of fuse pins (old or new style), part number of fuse pins, fuse pin length, and engine model.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repair or replacement shall be done in accordance with Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992; and Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 27, 1992. Portions of this amendment were effective earlier to recipients of telegraphic AD T92-21-51, issued October 8, 1992.

Issued in Renton, Washington, on November 4, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27340 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-173-AD; Amendment 39-8415; AD 92-24-09]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that requires installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved Airplane Flight Manual (AFM). This amendment is prompted by a report of the spool-down/roll-back and subsequent shutdown of one or more engines during the same flight. The actions specified by this AD are intended to prevent the loss of sufficient power to sustain flight.

DATES: Effective December 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the *Federal Register* on August 14, 1992 (57 FR 36614). That action proposed to require installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved Airplane Flight Manual (AFM).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$10,175, or \$138 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-24-09. British Aerospace: Amendment 39-8415. Docket 91-NM-173-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; as listed in British Aerospace Service Bulletin SB.11-97-01285A, Revision 1, dated April 3, 1992; certificated in any category.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To prevent the loss of sufficient power to sustain flight, accomplish the following:

(a) Install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, in accordance with British Aerospace Service Bulletin SB.11-97-01285A, Revision 1, dated April 3, 1992.

(b) Modify the airbrake auto-retract function, in accordance with British Aerospace Service Bulletin SB.11-97-01285A, Revision 1, dated April 3, 1992.

(c) Amend the FAA-approved Airplane Flight Manual (AFM) by inserting the applicable Temporary Revision (TR) in the Limitations and Normal/Abnormal Procedures Sections, as follows:

(1) For British Aerospace Model 146-100A series airplanes: TR 22.

(2) For British Aerospace Model 146-200A

series airplanes: TR 28 or TR 33, as applicable.

(3) For British Aerospace Model 146-300A series airplanes: TR 12.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation and modification shall be done in accordance with British Aerospace Service Bulletin SB.11-97-01285A, Revision 1, dated April 3, 1992, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-4	1	April 3, 1992.
5-14	Original	(Not Dated).

The amendment of the AFM shall be done in accordance with Temporary Revision No. 22 (Document No. BAe 3.3), dated April 1992; Temporary Revision No. 28 (Document No. BAe 3.6), dated April 1992; Temporary Revision No. 33 (Document No. BAe 3.6), dated April 1992; and Temporary Revision No. 12 (Document No. BAe 3.11), dated March 1992; as applicable. This incorporation by reference was approved by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the *Federal Register*, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 17, 1992.

Issued in Renton, Washington, on November 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 92-27312 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8364]

RIN 1545-AP20

**Corporations; Consolidated Returns—
Special Rules Relating To Dispositions
and Deconsolidations of Subsidiary
Stock; Correction****AGENCY:** Internal Revenue Service,
Treasury.**ACTION:** Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (T.D. 8364), which were published Thursday, September 19, 1991 (56 FR 47379). The regulations relate to §§ 1.337(d)-1, 1.337(d)-2, and 1.1502-20, and limit the losses of consolidated groups with respect to the stock of subsidiaries.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202-622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The regulations that are the subject of this correcting amendment were added to part 1 of title 26 of the Code of Federal Regulations under sections 337(d) and 1502 of the Internal Revenue Code.

Need for Correction

As published, the regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR 1.336-1 through 1.338(h)(10)-1T

Income taxes, Reporting and recordkeeping requirements, Securities.

26 CFR 1.1501-12 through 1.1502-100

Income taxes,

**PART 1—INCOME TAX; TAXABLE
YEARS BEGINNING AFTER
DECEMBER 31, 1953**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.337(d)-1 (a)(5), *Example 8* (ii), is amended by removing the references “§ 1.1502-13 (f)(1) (iii)” and “§ 1.267 (f)-2T” from the second sentence and adding the references

“§ 1.1502-13 (f)(1)(i)” and “§ 1.267(f)-2T (e)(1)” in each place, respectively. In the third sentence of *Example 8* (ii) and (iii), the word “eliminated” is removed and the word “disallowed” is added in its place.

Par. 3. The introductory text of § 1.337(d)-2 (c)(1)(i) is amended by removing the date “February 1, 1990” and adding the date “February 1, 1991” in its place.

Par. 4. Section 1.1502-20 is amended as follows:

1. Paragraph (a)(5), *Example 6* (ii), in the second sentence, the references “§ 1.1502-13 (f)(1)(iii)” and “§ 1.267(f)-2T (d)(2)” are removed and the references “§ 1.1502-13 (f)(1)(i)” and “§ 1.267(f)-2T (e)(1)” are added in each place, respectively.

2. Paragraph (a)(5), *Example 6* (ii), in the third sentence, and *Example 6* (iii), in the fourth sentence, the word “eliminated” is removed and the word “disallowed” is added in each place, respectively.

3. Paragraphs (c)(2)(i)(D) and (c)(2) (v) are revised.

4. The second sentence in paragraph (e)(1) is revised.

5. In the introductory text of paragraph (e)(2)(i)(B)(2), the language “the unrealized gain” is removed and the language “unrealized gain” is added in its place.

6. The second sentence in paragraph (h)(1) is revised.

7. The revised text is set forth below.

**§ 1.1502-20 Disposition of
deconsolidation of subsidiary stock.**

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) Any other event (or item) identified by the Commissioner in revenue rulings or revenue procedures (See § 601.601 (a)(2)(ii)(b) of this chapter).

* * * * *

(v) *Pre-September 13, 1991 positive investment adjustments—(A) In general.* The amount determined under paragraph (c)(1)(ii) of this section is limited for tax years of the subsidiary ending on or before September 13, 1991. The amount may not exceed the net increase, if any, in the basis of the share from—

(1) The date the share was first acquired by a member (whether or not a member at that time); to

(2) The end of the last taxable year ending on or before September 13, 1991 (or, if earlier, the date of the disposition or deconsolidation). If the share is transferred basis property (within the meaning of section 7701 (a)(43) from a

prior consolidated group, the date under paragraph (c)(2)(v)(A)(i) of this section is the date the share was first acquired by a member of the prior group. For purposes of this paragraph (c)(2)(v)(A), an increase in an excess loss account is treated as a decrease in stock basis and a decrease in an excess loss account is treated as an increase in stock basis.

(B) *Cessation of netting.* If a lower amount would result under paragraph (c)(1)(ii) of this section by determining the amount under this paragraph (c)(2)(v) as of the end of an earlier taxable year ending after December 31, 1986—

(1) The amount under this paragraph (c)(2)(v) is determined as of the earlier year end; and

(2) The amount determined under paragraph (c)(1)(ii) of this section is not limited for tax years of the subsidiary ending after the earlier year end.

* * * * *

(e) * * *

(1) * * * If a taxpayer acts with a view to avoid the effect of the rules of this section, adjustments must be made as necessary to carry out their purposes.

* * * * *

(h) * * *

(1) * * * For this purpose, dispositions deferred under § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before February 1, 1991. * * *

* * * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant
Chief Counsel (Corporate).

[FR Doc. 92-25332 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[T.D. 8447]

RIN 1545-AP27

**Determination of Rate of Interest—
Increase in Rate of Interest Payable on
Large Corporate Underpayments****AGENCY:** Internal Revenue Service,
Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations under section 6621(c), regarding an increase in the rate of interest payable on large corporate underpayments. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990. The regulations affect certain corporations and are necessary to

provide them with guidance needed to comply with these changes.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT:

David A. Schneider of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:2) or telephone (202) 622-4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1990, the *Federal Register* (55 FR 52054) published a notice of proposed rulemaking that, by cross reference to temporary regulations, provided rules under section 6621(c) of the Internal Revenue Code of 1986, as amended (Code), relating to the increase in the rate of interest payable on large corporate underpayments of tax. Written comments were received, and on April 2, 1991, a public hearing was held. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below.

Public Comments

Scope of Section 6621(c)

The proposed regulations define an "underpayment of a tax" to include interest, penalties, additional amounts, and additions to tax. Accordingly, the section 6621(c) rate applies to those items. One commentator argued that this is a strained interpretation of section 6621(c) and contrary to legislative intent. The commentator based the argument upon a number of factors, including the fact that the proposed regulations adopt the concept of a "threshold underpayment of a tax" that specifically excludes these items solely for purposes of determining whether a large corporate underpayment exists. As stated in the preamble to the temporary regulations, the sole purpose of the "threshold underpayment" concept is to enable taxpayers and the Service to determine more easily, prior to the time of an assessment, whether the taxpayer's underpayment exceeds the \$100,000 benchmark of section 6621(c)(3)(A). This concept has no application for any other purpose under section 6621(c) or elsewhere in the federal tax laws.

Section 6601(a), which imposes interest on underpayments, effectively defines an "underpayment" as any excess of the amount of tax imposed by

the Code over the amount of tax paid on or before the last date prescribed for payment. This reference to the amount of tax imposed by the Code includes interest, penalties, additional amounts, and additions to tax. See sections 6601(e)(1) and 6665(a)(2). The final regulations therefore provide that the section 6621(c) rate applies to the entire underpayment of a tax, including any interest, penalties, additional amounts, and additions to tax.

Some commentators argued that section 6621(c) does not apply to underpayments of income tax that are not subject to the deficiency procedures, citing the following language from the Conference Committee Report on section 6621(c): "In the case of an underpayment of a tax other than an income tax, a notice provided by the IRS that is similar to [a 30-day or 90-day letter] is treated similarly." H.R. Rep. No. 964, 101st Cong., 2d Sess. 1101 (1990). The report then cites an assessment notice under section 6303 as an example of a "similar" notice.

This portion of the report describes draft legislative language contained in the Senate bill. The conferees rejected this language and substituted the existing language describing potential trigger notices by reference to whether the deficiency procedures apply to a particular underpayment. The committee report, however, was not revised to reflect the amendment. Accordingly, the final regulations continue to provide that section 6621(c) applies to nondeficiency procedure underpayments of income tax.

Applicable Date

Form of Letter or Notice

The proposed regulations provide that if the deficiency procedures of subchapter B of chapter 63 of the Code apply to an underpayment, the applicable date is the 30th day after the earlier of the date on which the Service sends the taxpayer (i) a 30-day letter, or (ii) a 90-day letter. If the deficiency procedures do not apply to an underpayment, the applicable date is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment or proposed assessment.

Commentators urged the Service to adopt a number of special procedures designed to assist corporate taxpayers to act more expeditiously on letters and notices that may trigger an applicable date. For example, commentators urged the Service to identify such letters and notices, to allow taxpayers to designate an address to which the Service would

send the letters and notices, and to post-date them.

Under current administrative practice, 30-day letters, 90-day letters, and assessment notices are accompanied by a separate insert containing standard language of a general nature designed to alert taxpayers to the potential applicability of section 6621(c). Treasury and the Service believe that this practice gives taxpayers adequate notice of the possible application of section 6621(c). The Service has concluded that allowing taxpayers to designate a specific address for section 6621(c) notices is not administratively feasible at this time.

Letters and Notices Sent Prior to 30-day Letters

A few commentators asked for clarification that partial revenue agent reports ("RARs"), draft RARs, and information document requests that are sent to the taxpayer prior to a 30-day letter will be disregarded for purposes of determining an applicable date. Although the final regulations do not discuss this point, Treasury and the Service believe that the language of the statute and the regulations is clear that these documents are disregarded for purposes of determining an applicable date because they are not letters of proposed deficiency which allow the taxpayer an opportunity for administrative review in the Office of Appeals.

Exception for Payment of Amount Shown as Due

The proposed regulations provide that a letter or notice will be disregarded for purposes of determining the applicable date if the taxpayer makes a payment equal to the amount shown as due in the letter or notice within 30 days of the date that the Service sends the letter or notice. Several commentators argued that 30 days is insufficient for many large corporate taxpayers to take advantage of the payment rule. The commentators proposed a number of changes to the final regulations, including extending the 30-day period in general and creating special exceptions.

Section 6621(c)(2)(B)(ii) specifically limits the period for making a payment of the amount shown as due to 30 days. This period coincides with the 30-day period between the date that a letter or notice is sent and the applicable date of the section 6621(c) rate. Given the deliberate decision by Congress to limit these periods to 30 days in the statute, the final regulations do not extend the 30-day payment period or provide special exceptions.

Transition Rule

The proposed regulations contain a special transition rule disregarding certain letters or notices sent by the Service prior to January 1, 1991, for purposes of determining the applicable date. The Service will disregard these letters and notices if the taxpayer made a payment on or before January 31, 1991, equal to the amount shown as due in the letter or notice plus a reasonable estimate of the interest payable on such amount.

A number of commentators requested that the special transition rule be extended. One commentator asked that the regulations clarify that the payment of the amount shown as due in the most recent pre-1991 letter or notice satisfies the transition rule requirements even if the taxpayer had received a previous letter or notice showing a greater amount due for the same tax and the same taxable period.

The January 31, 1991, cut-off date was chosen to provide a comparable period to the 30-day period provided in the statute for paying the amount shown as due. Treasury and the Service continue to believe that the January 31, 1991, cut-off date is appropriate. Accordingly, the period for payment under the transition rule has not been extended in the final regulations. However, the final regulations do clarify that the payment of the amount shown as due in the most recent pre-1991 letter or notice satisfies the transition rule requirements even if the taxpayer had received a previous letter or notice showing a greater amount due for the same tax and the same taxable period.

Reliance on Transcripts or Account Information

In response to comments, the Service has considered whether taxpayers should be entitled to rely on transcripts or account information provided by the Service for purposes of avoiding the application of section 6621(c). For example, if the taxpayer receives a letter or notice showing an amount due, and the Service's account information on the taxpayer erroneously shows a balance of zero, the letter or notice would be disregarded for purposes of determining an applicable date. The Service has determined that such a rule would be inconsistent with the statute, which clearly provides that certain notices will trigger an applicable date under section 6621(c).

Partnerships Subject to TEFRA Procedures

Three commentators requested guidance on the relationship between

section 6621(c) and TEFRA partnership procedures. These commentators argued that only an assessment notice to a partner, and not any prior notice sent under the TEFRA procedures, should trigger an applicable date. Under the TEFRA procedures, the partnership, or the partners, may receive a number of notices prior to the actual assessment of the partnership adjustment. These notices include (i) notices of the beginning of a partnership-level administrative proceeding, (ii) a letter relating to proposed adjustments, rights of appeal, and requirements for filing a protest (a "60-day letter"), and (iii) the notice of a final partnership administrative adjustment ("FPAA").

Section 6230(a)(1) (which sets forth certain administrative provisions relating to TEFRA proceedings) provides generally that the deficiency procedures do not apply to the assessment of a change in the tax liability of a partner which properly reflects the treatment of a partnership item. Section 6621(c) provides that if the deficiency procedures do not apply to an underpayment, the applicable date will be the 30th day after the date that the Service sends the first letter of assessment or proposed assessment. Thus, the final regulations clarify that TEFRA letters and notices sent prior to an assessment notice will not be taken into account in determining an applicable date. Accordingly, in the absence of a prior assessment notice, 30-day letter, or 90-day letter sent to a corporate partner with respect to items other than partnership items, the applicable date will be the 30th day after the day on which an assessment notice is sent to the partner with respect to partnership items.

Withdrawn Letters and Notices

Several commentators argued that letters and notices that are withdrawn, modified, or revoked by the Service subsequent to their issuance should be disregarded in determining an applicable date.

Section 6212(d) of the Code provides that a 90-day letter that is rescinded will not be treated as a notice of deficiency for certain purposes. See Rev. Proc. 88-17, 1988-1 C.B. 692 (providing instructions on entering into an agreement under section 6212(d) to rescind a notice of deficiency). Under section 6404, the Secretary is authorized in certain limited circumstances to abate assessments. Consistent with these provisions, the final regulations provide that any 90-day letter that is rescinded and any assessment notice that is abated in full will be disregarded in determining an applicable date.

By contrast, no statutory or administrative provision exists for withdrawing 30-day letters. However, the final regulations provide that, in determining an applicable date, a 30-day letter will be disregarded if the letter is issued as a result of an administrative error either to the wrong taxpayer or for the wrong taxable period.

Commentators suggested that any 30-day letter that Appeals sends back to Examination for further consideration or development of an issue should be treated as withdrawn for purposes of determining an applicable date. They argued that the taxpayer is likely to receive no opportunity for Appeals review in such a case before the expiration of the 30-day period for paying the amount shown as due in the letter.

Congress intended that a taxpayer receive notification from the Service, and have a limited opportunity to pay the tax, before the section 6621(c) rate becomes applicable. However, a 30-day letter need not raise every potential issue or adjustment for the taxable year before the section 6621(c) rate becomes applicable. The statute is also clear that Appeals review is not a precondition to the application of section 6621(c) because the applicable date may be determined by reference to a 90-day letter if the Service elects not to issue a 30-day letter. Moreover, to postpone the applicable date until all issues are fully developed by the Examination function of the Service may provide taxpayers with an incentive not to cooperate with Examination prior to the time the case is forwarded to Appeals. Thus, the final regulations do not adopt this suggestion.

Letters and Notices for Different Types of Taxes

The proposed regulations provide that, in determining whether a threshold underpayment exists, different types of taxes (such as income tax and FICA tax) and amounts that relate to different taxable periods are not added together. In response to a comment, the final regulations amplify this point by providing that a letter or notice relating to a particular type of tax may result in an applicable date only for that type of tax.

Small Notices and Letters

The proposed regulations indicate that a letter or notice that remains unpaid 30 days after it is sent, regardless of the amount, will trigger an applicable date for a subsequently identified underpayment of the same type of tax for the same taxable period. Thus, a letter or notice for less than \$100,000 can

potentially trigger an applicable date for a large corporate underpayment that is later determined to exist. Several commentators urged the Service to adopt a rule that a letter or notice will not trigger the section 6621(c) rate unless the letter or notice indicates an amount due in excess of \$100,000.

Treasury and the Service have declined to make this change to the regulations for several reasons. First, the legislative history of section 6621(c) reveals that Congress did not intend that a letter or notice would trigger the section 6621(c) rate only for the amount shown as due in that letter or notice. See H.R. Rep. No. 964, 101st Cong., 2d Sess. 1101 (1990) ("The AFR plus 5 rate applies to the amount determined to be the underpayment, regardless of the amount of tax assessed in the 30-day letter, 90-day letter, or other notice."). Second, as discussed under Withdrawn Letters and Notices, neither notice of all issues nor administrative review is required by the statute as a precondition to application of the section 6621(c) rate. Third, the 30-day payment rule in the statute gives taxpayers a way to prevent certain notices (such as small assessment notices) from triggering the application of section 6621(c). Finally, the suggested rule requires collapsing into one test the two separate statutory tests for determining (i) the existence of a large corporate underpayment and (ii) an applicable date.

Post-Assessment Determinations of the Amount of the Threshold Underpayment

Commentators argued that the section 6621(c) rate should not apply if it is determined after assessment that the threshold underpayment is less than \$100,000. The section 6621(c) rate does not apply if, as a result of a full or partial abatement of an assessment to correct an administrative error on the part of the Service, the taxpayer's threshold underpayment does not exceed \$100,000. The final regulations also provide that the section 6621(c) rate does not apply, if, as a result of a court determination of the taxpayer's liability, the threshold underpayment is less than \$100,000. However, a net operating loss or credit carryback does not reduce the amount of the threshold underpayment for an earlier taxable period.

Abatement of Interest Because of Appeals Delay

Some commentators argued that the Service should abate the 6621(c) incremental interest automatically if the Service "causes" a delay during the appeals process. The legislative history of section 6621(c) indicates that Congress did not intend to postpone the

application of the section 6621(c) rate until such time as the Service and the taxpayer have had ample opportunity to exchange legal arguments, request or furnish all necessary information, or resolve all disputed issues. Moreover, Congress gave the Service no special authority to abate section 6621(c) interest. Accordingly, the final regulations do not adopt this suggestion.

Relationship Between Former and Current Section 6621(c)

One commentator suggested that the regulations should address whether former section 6621(c) and current section 6621(c) could apply concurrently. The statute and regulations provide that section 6621(c) is effective for determining interest for periods after December 31, 1990, regardless of the taxable period to which the underlying tax relates. Former section 6621(c), prior to its repeal, increased by 20 percent the rate of interest imposed with respect to any substantial underpayment of income taxes attributable to tax motivated transactions. The repeal of former section 6621(c) was effective for returns the due date for which (determined without regard to extensions) is after December 31, 1989.

It is clear from the effective dates that both former section 6621(c) and current section 6621(c) could apply to an underpayment of income tax by a C corporation if the requirements of both provisions are met. Because the applicability of these provisions depends on a number of independent factors, and because there is no uncertainty with respect to the effective dates of either provision, the final regulations contain no statement regarding the relationship between the two provisions.

Source of Interest Rules Under Section 861

Under section 861, underpayment interest (expense) paid to the U.S. Government must be "apportioned" between U.S. and foreign sources. Refunded interest (income), however, is treated as entirely U.S. source. Commentators argued that this result is unfair to taxpayers and requested that the final regulations under section 6621(c) address this issue. Although section 6621(c) may exacerbate the effect of the different sourcing rules, the commentators' concern relates directly to the sourcing rules themselves, and not to section 6621(c). Therefore, the final regulations do not address this issue.

Impact of Payment Upon Access to Tax Court

Commentators expressed concern that because taxpayers must pay the amount shown as due in a letter or notice within 30 days in order to avoid an applicable date, the 30-day payment rule will discourage some taxpayers from seeking administrative review and from challenging proposed deficiencies in the Tax Court. To some extent, these changes in taxpayers' approaches are predictable responses to section 6621(c), which was enacted to reduce the number and amount of corporate deficiencies by encouraging corporations to pay their taxes sooner. Thus, the final regulations do not contain a provision on this point.

Netting Overpayments Against Underpayments

In the legislative history of section 6621(c), Congress called upon the Secretary to implement the most comprehensive crediting procedures under section 6402 of the Code that are consistent with sound administrative practice. A number of commentators urged the Service to include in the final regulations under section 6621(c) crediting or "netting" provisions pursuant to which no underpayment interest would be imposed to the extent an overpayment is credited against an underpayment.

The authority provided by section 6402 to the Secretary to credit the amount of any overpayment against any liability under the Code has significance beyond section 6621(c). The Service is continuing its efforts to develop crediting procedures in a separate project. Accordingly, no special crediting or netting provisions are contained in these final regulations.

Cash Bond Procedures

Two commentators requested that the final regulations address the restrictions on cash bond procedures. Generally, taxpayers may elect to make a deposit in the nature of a cash bond that will effectively stop the running of interest on an equal amount of underpayment. See Rev. Proc. 84-58, 1984-2 C.B. 501 (describing the deposit procedures). The taxpayer generally may request that the deposit be returned (without interest) anytime before assessment of the tax. However, if the deposit is returned, the depositor loses the benefit of the interest offset for the entire period of the deposit.

Although the enactment of section 6621(c) may result in closer scrutiny being applied to certain aspects of the deposit procedures, any reevaluation of

these procedures would involve numerous administrative issues that have significance far beyond section 6621(c). Thus, the final regulations do not address the restrictions contained in the cash bond procedures. Moreover, for the reasons set forth in the preamble to the temporary regulations, the final regulations continue to provide that a deposit in the nature of a cash bond will not be considered a payment of the amount shown as due.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal author of these regulations is David A. Schneider of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these final regulations.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6621-3 is added to read as follows:

§ 301.6621-3 Higher interest rate payable on large corporate underpayments.

(a) *In general.* Section 6621 establishes the interest rate for purposes of computing the amount of interest that must be paid under section 6601, relating to interest on underpayments of tax. Section 6621(a)(2) provides that the underpayment rate is the sum of the Federal short-term rate (determined under section 6621(b)) plus 3 percentage points. That underpayment rate is referred to hereinafter as the "section 6621(a)(2) rate." Section 6621(c) and this section, however, provide that the underpayment rate on any large corporate underpayment is the sum of the Federal short-term rate (determined under section 6621(b)) plus 5 percentage points. This higher underpayment rate is referred to hereinafter as the "section 6621(c) rate." The section 6621(c) rate applies only for periods after the applicable date (as determined in paragraph (c) of this section).

(b) *Large corporate underpayment—*
(1) *Defined.* For purposes of section 6621(c) and this section, "large corporate underpayment" means any underpayment of a tax by a C corporation for any taxable period if the amount of the threshold underpayment of the tax (as defined in paragraph (b)(2)(ii) of this section) for that taxable period exceeds \$100,000.

(2) *Underpayment of a tax—*(i) *In general.* As used in section 6621(c) and this section, "underpayment of a tax" means the excess of a tax imposed by the Internal Revenue Code over the amount of such tax paid on or before the last date prescribed for payment. Except as provided in paragraph (b)(2)(ii) of this section, "tax" for such purposes includes interest, penalties, additional amounts, and additions to tax. See sections 6601(e)(1), 6665(a), and 6671(a). Thus, the section 6621(c) rate generally applies to any interest, penalties, additional amounts, and additions to tax, as well as to the underlying tax with respect to which such amounts are imposed.

(ii) *Threshold underpayment of a tax.* Solely for purposes of this section and not for any other purpose under section 6621(c) or elsewhere in the interpretation or administration of the federal tax laws, a "threshold underpayment of a tax" is the excess of a tax imposed by the Internal Revenue Code (exclusive of interest, penalties, additional amounts, and additions to tax) for the taxable period over the amount of such tax paid on or before the last date prescribed for payment. Thus, any payments made after the last date prescribed for payment (for example, by way of an amended return) will not

affect the existence of a threshold underpayment. In determining whether there is a threshold underpayment, different types of taxes (such as income tax and FICA tax) and amounts that relate to different taxable periods are not added together.

(iii) *When determined—*(A) *In general.* The existence of a threshold underpayment of a tax and the amount of a large corporate underpayment are generally determined only when an assessment is made with respect to the taxable period. Thus, the amount of a deficiency or proposed deficiency set forth in a letter or notice pursuant to which the applicable date is determined (under paragraph (c) of this section) does not determine whether there is a large corporate underpayment.

(B) *Judicial determinations.* Notwithstanding any prior assessment made with respect to a taxable period, the section 6621(c) rate does not apply if, after a federal court determines the taxpayer's liability for a period, the threshold underpayment for that taxable period does not exceed \$100,000. See Example 3 in paragraph (d) of this section.

(iv) *Special rule.* The section 6621(c) rate is not used to compute the interest charges that a taxpayer timely assesses against itself in return for using a method of tax accounting or reporting that defers the payment of tax, such as the interest charges relating to passive foreign investment companies under section 1291(c) and installment obligations of nondealers under section 453A(c). However, to the extent such charges are not paid on or before the last date prescribed for payment and therefore become part of an underpayment of a tax, the section 6621(c) rate will apply to such amounts for periods after the applicable date (as determined in paragraph (c) of this section).

(3) *C corporation defined.* For purposes of section 6621(c)(3)(A) and this section, "C corporation" means, with respect to any taxable period, a corporation that is a C corporation during any part of the taxable period. Interest on a large corporate underpayment for a taxable period continues to be imposed at the section 6621(c) rate even if during or after the taxable period—

(i) The taxpayer ceases to be a C corporation; or
(ii) The underpayment becomes the liability of a successor or transferee that is not a C corporation.

(4) *Taxable period.* For purposes of section 6621(c) and this section, the "taxable period" is the taxable year in

the case of any tax imposed by subtitle A of the Internal Revenue Code. In the case of any other tax, the "taxable period" is the period to which the underpayment relates. For example, the taxable period for an underpayment of FICA taxes is the calendar quarter. If the underpayment does not relate to a particular period (for example, in the case of certain transactional excise taxes), the "taxable period" is the period covered by a return on which the tax is required to be shown.

(5) *Last date prescribed for payment.* For purposes of this section, the "last date prescribed for payment" means the last date prescribed for payment as determined, without regard to any extension of time, under section 6601(b).

(c) *Applicable date*—(1) *In general.* The section 6621(c) rate applies only to periods after the applicable date. Pursuant to the effective date of section 6621(c) and paragraph (e) of this section, however, the section 6621(c) rate will not apply prior to January 1, 1991, even if the applicable date is prior to December 31, 1990. A letter or notice relating to a particular type of tax creates an applicable date only for that type of tax. For example, a letter or notice with respect to FUTA tax will not create an applicable date with respect to income tax for the same taxable year.

(2) *When deficiency procedures apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code apply, is the 30th day after the earlier of—

(i) The date on which the Service sends the taxpayer the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Service's Office of Appeals (commonly called a "30-day letter"); or

(ii) The date on which the Service sends a deficiency notice under section 6212 of the Internal Revenue Code (commonly called a "90-day letter").

(3) *When deficiency procedures do not apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures do not apply, is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment or proposed assessment of the tax. In the case of income taxes, for example, the deficiency procedures do not apply to amounts shown as due on the taxpayer's return if the taxpayer fails to remit the full amount on or before the last date prescribed for payment, and to amounts attributable to mathematical or clerical errors on a return (unless a request for abatement is

filed by the taxpayer under section 6213(b)). Because no 30-day letter or 90-day letter is issued to the taxpayer in such cases, the applicable date is the 30th day after the date on which an assessment notice under section 6303 of the Internal Revenue Code is sent.

(4) *Partnership items.* For purposes of section 6621(c) and this paragraph (c), 60-day letters and the notices described in sections 6223(a)(1) and 6223(a)(2) (relating to administrative proceedings at the partnership level) are not treated as letters of proposed deficiency that allow the taxpayer an opportunity for administrative review in the Service's Office of Appeals, deficiency notices under section 6212 of the Internal Revenue Code, or letters or notices that notify the taxpayer of an assessment or proposed assessment of the tax. Thus, in the absence of any other letter or notice described in paragraph (c)(2) or (c)(3) of this section that establishes an earlier applicable date, the applicable date in the case of any underpayment of a tax attributable, in whole or in part, to a partnership item (as defined in section 6231(a)(3)) is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment of the tax.

(5) *Exception of payment of amount shown as due*—(i) *In general.* A letter of notice will be disregarded for purposes of determining the applicable date if the taxpayer makes a payment equal to the amount shown as due in the letter or notice within 30 days from the date that the Service sends the letter or notice.

(ii) *Special transition rule.* A letter or notice sent by the Service prior to January 1, 1991, will be disregarded by the Service for purposes of determining the applicable date if the taxpayer makes a payment on or before January 31, 1991, equal to the amount shown as due in the letter or notice plus a reasonable estimate of the interest payable on such amount computed by applying the section 6621(a)(2) rate. If the taxpayer has received two or more letters or notices with respect to the same tax for the same taxable period and pays the amount shown as due in the last letter or notice sent prior to December 19, 1990, (plus a reasonable estimate of the interest), all of the prior letters and notices with respect to the same tax for the same taxable period will be disregarded under this paragraph (c)(5)(ii). In the case of an assessment notice, the payment of the amount of interest shown as due on the last assessment notice sent to the taxpayer prior to December 19, 1990, will be treated as a payment of a reasonable estimate of the interest payable on the amount shown in that assessment notice

or in any prior assessment notice sent with respect to the same tax for the same taxable period. The special transition rule in this paragraph (c)(5)(ii) applies even if the payment is not made within 30 days of the date on which the Service sent the letter or notice.

(iii) *Amount shown as due.* For purposes of section 6621(c)(2)(B)(ii) and this paragraph (c)(5), the "amount shown as due" in any letter or notice means the total amount of tax, as well as any interest, penalties, additional amounts, and additions to tax that are set forth in the letter or notice. A deposit in the nature of a cash bond will not be considered a payment of the amount shown as due.

(6) *Exception for withdrawn letters and notices*—(i) *Letters of proposed deficiency.* A letter of proposed deficiency will be disregarded for purposes of determining the applicable date if the letter of proposed deficiency is issued as a result of an administrative error either to the wrong taxpayer or for the wrong taxable period.

(ii) *Deficiency notices.* A deficiency notice under section 6212 of the Internal Revenue Code will be disregarded for purposes of determining the applicable date if the deficiency notice is rescinded under section 6212(d).

(iii) *Assessment letters and notices.* A letter or notice that notifies the taxpayer of an assessment or proposed assessment of tax will be disregarded for purposes of determining the applicable date if the full amount of tax assessed is subsequently abated.

(d) *Examples.* The application of this section may be illustrated by the following examples.

Example 1. V, a C corporation, timely files Form 941 on January 31, 1991, for the fourth quarter of 1990. On September 1, 1992, the Service sends V a section 6303 notice and demand reflecting an additional FICA tax liability for that quarter of \$90,000. Interest computed at the section 6621(a)(2) rate totals \$15,000 as of September 1, 1992. Accordingly, V's underpayment of FICA tax for the fourth quarter of 1990 exceeds \$100,000. However, V's \$90,000 threshold underpayment of FICA tax for that taxable period is less than \$100,000, so that the section 6621(c) rate will not apply to the underpayment for that taxable period.

Example 2. (i) W, a C corporation, timely files its 1990 income tax return on March 15, 1991, showing a liability of \$95,000, of which W pays only \$35,000 with the return. On June 1, 1991, the Service sends W an assessment notice reflecting the balance due of \$60,000 plus interest computed at the section 6621(a)(2) rate. W pays all amounts due on August 1, 1991. On July 1, 1993, the Service sends W a 90-day letter (without having sent a 30-day letter) reflecting an additional income tax deficiency of \$85,000 for the

taxable year 1990. W files a petition in the Tax Court within 90 days. In 1995, the Tax Court determines a \$50,000 income tax deficiency (exclusive of interest, penalties, additional amounts, and additions to tax) for 1990, which the Service promptly assesses against W.

(ii) As a result of the combination of the failure to timely pay the \$60,000 of income tax reported as due on the return and the Tax Court's determination of an additional deficiency of \$50,000, W's threshold underpayment of income tax for 1990 is \$110,000. Because W is a C corporation and the threshold underpayment for 1990 exceeds \$100,000, the section 6621(c) rate applies to W's 1990 large corporate underpayment for periods after the applicable date.

(iii) The applicable date is July 1, 1991, the 30th day after the date on which the Service sent W the first assessment notice.

(iv) From March 16, 1991, through July 1, 1991, interest on W's 1990 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621(a)(2) rate. From July 2, 1991, such interest is computed at the section 6621(c) rate.

(v) If W had paid the amount shown as due on the June 1, 1991, assessment notice on or before June 30, 1991, instead of on August 1, 1991, the applicable date would have been July 31, 1993.

(vi) Assume that W had paid the amount shown as due on the June 1, 1991, assessment notice on or before June 30, 1991. If W had made a \$40,000 deposit in the nature of a cash bond on July 15, 1993, the applicable date would be July 31, 1993. Moreover, the deposit would have no effect on the existence or amount of W's threshold underpayment or large corporate underpayment for 1990. In such a case, however, when the Service assesses the amount due from W in 1995, the deposit would be treated as a payment made as of July 15, 1993, for purposes of computing interest due after that date. As a result, interest would accrue after July 15, 1993, (at the section 6621(c) rate) only on the portion of W's 1990 underpayment that exceeds the \$40,000 deposit amount.

Example 3. (i) X, a C corporation, filed its 1989 income tax return on September 17, 1990, pursuant to an automatic extension. X enclosed payment of the \$7,500 balance reported on the return as due (plus interest). On January 1, 1992, the Service sends X a written notification that X's 1989 income tax return is being examined. This written notification also contains a request that X provide supplemental information with respect to particular deductions totalling \$1.5 million. On July 1, 1993, the Service sends X a 30-day letter proposing a \$450,000 deficiency (without any reference to penalties, additional amounts, additions to tax, and interest) with respect to 1989. On December 15, 1993, the Service sends X a 90-days letter asserting a deficiency of \$300,000 (excluding penalties, additional amounts, additions to tax, and other interest). X does not file a Tax Court petition and the Service assesses the \$300,000 (plus interest and penalties) on April 1, 1994. On April 5, 1994, X pays the full amount assessed. Thereafter, X timely files an administrative claim for refund and a

refund suit in federal district court for the amounts assessed on April 1, 1994. On September 30, 1995, the federal district court determines that, exclusive of interest and penalties, X overpaid its 1989 income tax by \$250,000.

(ii) The April 1, 1994, assessment establishes at that time that X's threshold underpayment of income tax for 1989 is \$300,000. Because X is a C corporation and the threshold underpayment for 1989 exceeds \$100,000, X's underpayment of income tax for 1989 is a large corporate underpayment to which the section 6621(c) rate applies for periods after the applicable date. X's decision to file a refund claim does not affect, in and of itself, either the existence of a threshold underpayment or the amount of X's large corporate underpayment.

(iii) For purposes of determining the amount of interest to assess on April 1, 1994, the applicable date is July 31, 1993, the 30th day after the date on which the Service sent X a 30-day letter. The January 1, 1992, notice of examination and request for additional information has no effect on the applicable date. Similarly, the September 30, 1995, federal district court decision has no effect on the applicable date.

(iv) From March 16, 1990, through July 31, 1993, interest on X's 1989 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621(a)(2) rate. From August 1, 1993, through April 5, 1994, such interest is computed at the section 6621(c) rate.

(v) Because of the federal district court's decision that X's underpayment, exclusive of interest and penalties, was only \$50,000, X does not have a large corporate underpayment of income tax for 1989. Thus, the interest X paid with respect to the remaining \$250,000 in taxes (exclusive of interest and penalties) becomes part of the overpayment and will be refunded. In addition, any interest computed at the section 6621(c) rate for the period from August 1, 1993, through April 5, 1994, should be recomputed at the section 6621(a)(2) rate and the difference refunded.

Example 4. (i) Y, a C corporation, timely filed its 1989 income tax return on March 15, 1990, and enclosed payment of the amount reported on the return as due. On May 1, 1990, the Service sent to Y an assessment notice for \$1,000 resulting from a math error on Y's return. Y did not request an abatement of the assessment pursuant to section 6213(b). Instead, Y paid the \$1,000, plus interest, on July 31, 1990. On March 31, 1992, the Service sends Y a 90-day letter showing an income tax deficiency for 1989 of \$125,000 (exclusive of interest, penalties, additional amounts, and additions to tax). No 30-day letter had been issued previously to Y in connection with its 1989 taxable year. Y does not file a petition with the Tax Court, but files an amended return for 1989 on April 15, 1992, showing \$30,000 of tax due. Y pays this amount (plus interest from March 15, 1990, computed at the section 6621(a)(2) rate) with the amended return. Shortly thereafter, the Service assesses the \$125,000 deficiency (plus interest) and credits the April 15, 1992, payment against the assessment.

(ii) Y's threshold underpayment for 1989 is \$125,000 notwithstanding Y's April 15, 1992, payment of \$30,000. Because Y is a C corporation and the threshold underpayment for 1989 exceeds \$100,000, Y has a large corporate underpayment of income tax for the taxable period 1989 to which the section 6621(c) rate applies for periods after the applicable date.

(iii) Because Y paid the \$1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date is April 30, 1992, the 30th day after the 90-day letter is sent.

(iv) From March 16, 1990, through April 30, 1992, interest is computed on Y's underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) at the section 6621(a)(2) rate. From May 1, 1992, such interest is computed at the section 6621(c) rate.

(v) If Y had not paid the \$1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date would have been May 31, 1990, and interest would be computed at the section 6621(c) rate beginning on January 1, 1991. If, however, Y had timely requested an abatement of the assessment under section 6213(b), the applicable date would be April 30, 1992.

Example 5. (i) Effective January 1, 1993, Y converts from a C corporation to an S corporation. On January 31, 1993, Y files its 1992 FUTA tax return and encloses a payment equal to the amount reported as due on the return. On March 15, 1993, Y files its 1992 income tax return and encloses a payment equal to the amount reported as due on the return. On August 1, 1993, the Service sends to Y an assessment notice for \$150,000 of FUTA tax, plus interest, with respect to calendar year 1992. Y pays the full amount shown as due in the assessment notice on August 7, 1993. On January 1, 1995, Y files an amended income tax return for 1992 showing \$15,000 of tax due. Y pays this amount with the amended return. On February 10, 1995, the Service sends Y an assessment notice for the interest payable on the \$15,000. Y pays this interest on February 13, 1995.

(ii) Y's threshold underpayment of FUTA tax for 1992 is \$150,000. Because Y was a C corporation in 1992 and the threshold underpayment of FUTA tax for 1992 exceeds \$100,000, Y has a large corporate underpayment of FUTA tax. However, Y's threshold underpayment of income tax for the same taxable period (*i.e.*, calendar 1992) is \$15,000, so that does not have a large corporate underpayment of income tax for that year.

(iii) Because Y pays within 30 days the amount shown as due on the August 1, 1993, assessment notice, there is no applicable date with respect to the large corporate underpayment of FUTA tax for 1992.

(iv) All of the interest payable with respect to the 1992 underpayments of FUTA and income taxes is computed at the section 6621(a)(2) rate.

(v) If Y had not paid the amount shown as due on the August 1, 1993, FUTA tax assessment notice within 30 days, the applicable date would have been August 31,

1993, (the 30th day after the assessment notice is sent). Thus, interest would have been computed at the section 6621(c) rate after that date, even though Y is not at that time a C corporation.

(vi) If the amended 1992 income tax return Y files on January 1, 1995, had shown \$115,000 of tax due instead of \$15,000, Y's threshold underpayment of income tax for 1992 would have been \$115,000. Because Y was a C corporation in 1992 and the threshold underpayment of income tax for that year would have exceeded \$100,000, Y would have a large corporate underpayment of income tax for that year. However, because Y would have paid the amount shown as due in the February 10, 1995, assessment notice within 30 days of when that assessment notice was sent, there would have been no applicable date with respect to that large corporate underpayment and the section 6621(c) rate would have not applied.

Example 6. (i) On August 1, 1990, the Service sent to Z, a C corporation, an assessment notice for \$200,000 of income tax, plus \$30,000 in interest and penalties, with respect to calendar year 1988. Subsequent assessment notices were sent to Z on September 12, 1990, October 10, 1990, and November 14, 1990, each including additional interest. The November 14, 1990, assessment notice provided that the total amount of tax, interest and penalties due was \$242,000. On December 31, 1990, Z pays \$230,000. On February 13, 1991, the Service sends Z an assessment notice for the remaining balance (plus additional interest thereon). On December 31, 1991, Z pays all amounts owed as of that date in connection with its 1988 income tax liability.

(ii) Z's threshold underpayment of income tax for 1988 is \$200,000. Because Z is a C corporation and its threshold underpayment of income tax for 1988 exceeds \$100,000, Z has a large corporate underpayment for 1988 to which the section 6621(c) rate applies for periods after the applicable date.

(iii) Notwithstanding Z's payment of \$230,000 on December 31, 1990, the applicable date with respect to the large corporate underpayment of 1988 income tax is August 31, 1990, the 30th day after the date on which the Service sent the first assessment notice.

(iv) From March 16, 1989, to December 31, 1990, interest is computed on Z's underpayment of income tax (including any interest, penalties, additional amounts and additions to tax) at the section 6621(a)(2) rate. From January 1, 1991, through December 31, 1991, interest is computed on that underpayment at the section 6621(c) rate.

(v) If Z had paid on or before January 31, 1991, the full \$242,000 shown as due on the November 14, 1990, assessment notice, the applicable date with respect to any remaining unpaid interest would have been March 15, 1991, the 30th day after the Service sent the February 13, 1991, assessment notice.

(vi) The same result as in paragraph (v) of this *Example 6* would apply if the November 14, 1990, assessment notice had provided that only \$150,000 was due with respect to calendar year 1988 (as a result of a correction by the Service of an error in its original August 1, 1990, assessment, and not as a result of any payment by Z), and if Z had

paid that \$150,000 on or before January 31, 1991.

(e) *Effective date.* Section 6621(c) and this section are effective for determining interest for periods after December 31, 1990, regardless of the taxable period to which the underlying tax may relate and even if the applicable date is prior to December 31, 1990.

§ 301.6621-3T [Removed]

Par. 3. Section 301.6621-3T is removed.

Approved: October 19, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-27145 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 345

[DoD Directive 1342.21]

Department of Defense Section 6 Schools

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes the Department of Defense (DoD) section 6 Schools as a subordinate organizational element of the Department of Defense Education Activity, a newly created DoD Field Activity which operates under the authority, direction, and control of the Assistant Secretary of Defense (Force Management and Personnel). The part also assigns the authorities, responsibilities, functions, and relationships of the Director, section 6 Schools who will perform all of the duties necessary to organize, fund, and direct the complete operation of the DoD section 6 Schools. The mission of the DoD section 6 Schools is to provide a free public education, from pre-kindergarten through grade twelve, for eligible dependent children of U.S. military personnel and federally employed civilian personnel in schools operated by the DoD within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands; and, to provide a free, appropriate public education for dependents with disabilities, ages 3 through 21.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: R. Meiners, Office of the Director of

Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301, telephone 703-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 345

Elementary and secondary education, Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 345 to read as follows:

PART 345—DEPARTMENT OF DEFENSE SECTION 6 SCHOOLS

Sec.

- 345.1 Purpose.
- 345.2 Applicability.
- 345.3 Mission.
- 345.4 Organization.
- 345.5 Responsibilities and functions.
- 345.6 Relationships.
- 345.7 Authorities.
- 345.8 Administration.

Appendix A to Part 345—Delegations of Authority

Authority: 20 U.S.C. 2362.

§ 345.1 Purpose.

This part, pursuant to the authority vested in the Secretary of Defense under 20 U.S.C. 2362, establishes the Department of Defense (DoD) section 6 Schools with the mission, organization, responsibilities, functions, relationships, and authorities as prescribed herein.

§ 345.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and the DoD Field Activities, (hereafter referred to collectively as "the DoD Components").

(b) The schools (pre-kindergarten through grade 12) operated by the Department of Defense within the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§ 345.3 Mission.

The mission of the DoD section 6 Schools is to provide a free public education of high quality from pre-kindergarten through grade twelve for eligible dependent children of U.S. military personnel and federally employed civilian personnel, when those children are eligible for an education in DoD section 6 Schools under 20 U.S.C. 2362, 20 U.S.C. 241 note, 32 CFR part 68, and 20 U.S.C. 1400 et. seq., to provide a free, appropriate education for

dependents with disabilities, ages 3 through 21.

§ 345.4 Organization.

The DoD section 6 Schools Office is established as an organizational element of the DoD Education Activity (DoDEA), a DoD Field Activity operating under the direction, authority, and control of the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)). It shall consist of a Director and such subordinate organizational structures and activities as shall be established by the Director, DoD section 6 Schools, with the resources authorized by the ASD(FM&P).

§ 345.5 Responsibilities and functions.

(a) The Director, DoD section 6 Schools, shall perform all of the duties necessary to organize, manage, fund, direct, and supervise the complete operation of the DoD section 6 Schools. These duties include, but are not limited to, the following:

(1) Serve as the principal advisor and staff assistant to the ASD(FM&P) on matters relating to the DoD section 6 Schools.

(2) Ensure the development of policies and procedures for the operation, management, budgeting (in accordance with guidance provided by the Comptroller, Department of Defense), construction, and financing of DoD section 6 Schools and for DoD section 6 Special Arrangements (as defined in 32 CFR part 68 for eligible dependent children in CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, under 20 U.S.C. 2362, 20 U.S.C. 241 note, and 32 CFR part 68).

(3) Ensure the establishment of elected school boards in DoD section 6 School Arrangements operating under 20 U.S.C. 2362 and 20 U.S.C. 241 note. The functions of such school boards shall be to oversee school expenditures and operations, subject to audit procedures established by the Director, section 6 Schools and consistent with 20 U.S.C. 2362, 20 U.S.C. 241 note, and this part.

(4) Ensure that the free public education being provided under this part is, to the maximum extent practicable, comparable to that being provided by comparable public school districts in the State in which the DoD section 6 School Arrangement or DoD section 6 Special Arrangement (as defined in 32 CFR part 68) is located or, if outside of CONUS, Alaska, and Hawaii, as the being provided by the District of Columbia Public Schools.

(5) Ensure the establishment of audit procedures for reviewing funding of DoD section 6 School Arrangements and DoD section 6 Special Arrangements.

(6) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9-M.¹

(7) Ensure that nonappropriated funds and related activities of DoD section 6 School Arrangements are reviewed under DoD Directive 7600.6.²

(8) Establish guidance for student eligibility for DoD section 6 School Arrangements.

(9) Negotiate interservice support agreements with the Military Departments in accordance with DoD Directive 4000.19.³

(10) Perform other functions as may be assigned by the ASD(FM&P).

(b) The Assistant Secretary of Defense (Force Management and Personnel) shall:

(1) Recommend policies and resources for the administration of the DoD section 6 Schools to the Secretary of Defense.

(2) Exercise direction, authority, and control over the Director, DoD section 6 Schools, through the Director of Education, in accordance with 32 CFR part 346.

(3) Issue, as necessary, DoD instructions, publications, and other guidance implementing this part.

(c) The Comptroller of the Department of Defense shall provide technical advice and assistance to the Director, DoD section 6 Schools, on budget and financial management activities of the DoD section 6 Schools.

(d) The General Counsel of the Department of Defense shall:

(1) Coordinate on guidance established by the Director, DoD section 6 Schools, for student eligibility for DoD section 6 School Arrangements.

(2) Provide legal advice on the implementation of this part.

(e) The Secretaries of the Military Departments shall provide such facilities, logistics, and administrative support as are required for the effective operation of the DoD section 6 Schools program. Reimbursements for goods and services shall be made in accordance with DoD Directive 4000.19 and DoD Directive 1400.16.⁴ For the purposes of

accepting gifts under 10 U.S.C. 2601 only, the Secretaries of the Military Departments shall be deemed to have jurisdiction over section 6 Schools located on installations under their respective control.

§ 345.6 Relationships.

(a) In the performance of assigned duties, the Director, DoD section 6 Schools, shall:

(1) Exchange information and advice and coordinate actions with DoD Components having collateral or related functions.

(2) Use established facilities and services in the Department of Defense and other Government Agencies, whenever practicable, to achieve maximum efficiency and economy of operations.

(3) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission of the DoD section 6 Schools.

(b) All DoD Components shall coordinate with the Director, DoD section 6 Schools, as appropriate, on all matters relating to the operation of the DoD section 6 Schools.

§ 345.7 Authorities.

The Director, DoD section 6 Schools, is specifically delegated authority to:

(a) Execute the responsibilities and functions described in § 345.5.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5,⁵ as deemed necessary.

(c) Communicate directly with appropriate representatives of the DoD Components and other governmental and nongovernmental agencies on matters related to the DoD section 6 Schools.

(d) Exercise the operational and administrative authorities contained in appendix A to this part.

§ 345.8 Administration.

(a) The Director, DoD section 6 Schools, shall be a civilian selected by the ASD(FM&P).

(b) Administrative support for Headquarters, DoD section 6 Schools, and DoD section 6 Schools field elements shall be provided by the DoD Components.

(c) The DoD section 6 Schools Office shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 345.5(a)(6).

³ See footnote 1 to § 345.5(a)(6).

⁴ See footnote 1 to § 345.5(a)(6).

⁵ See footnote 1 to § 345.5(a)(6).

Appendix A to Part 345—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) or, in the absence of the ASD(FM&P), the person acting for the ASD(FM&P), is hereby delegated authority, as required in administration and operation of the DoD section 6 Schools, to:

1. Make determinations with respect to recruiting, selecting, removing, disciplining, and taking other actions involving civilian employees of the DoD section 6 Schools.

2. In accordance with 5 U.S.C. 7532; E.O. 10450, 18 FR 2489, 3 CFR, 1949-1953 Comp., p. 936; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; and DoD Directive 5200.2,¹ "DoD Personnel Security Program," as appropriate:

a. Designate any position in the DoD section 6 Schools as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DoD section 6 Schools for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of a DoD section 6 Schools employee in the interest of national security.

3. Authorize and approve:

a. Travel for DoD section 6 Schools civilian employees, in accordance with Volume II, Joint Travel Regulations.

b. Invitational travel to non-DoD personnel whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DoD section 6 Schools activities, in accordance with Volume II, Joint Travel Regulations.

c. Overtime work for DoD section 6 Schools civilian employees in accordance with chapter 55, Subpart V, of 5 U.S.C. and applicable OPM regulations.

4. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2,² "Records Management Program".

5. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, and other public periodicals, as required for the effective administration of the DoD section 6 Schools consistent with 44 U.S.C. 3702.

6. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M,³ "DoD Directives System Procedures".

7. Enter into support and service agreements with other DoD Components, including the Military Departments, as required for the effective performance of responsibilities and functions assigned to the DoD section 6 Schools.

8. Enter into and administer contracts directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DoD section 6 Schools. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

The ASD(FM&P) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above, or as otherwise provided by law or regulation.

These delegations of authorities are effective October 13, 1992.

Dated: November 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-27234 Filed 11-10-92; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 346

[DoD Directive 1342.20]

Department of Defense Education Activity

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document establishes the Department of Defense Education Activity (DoDEA) as a Field Activity of the Department of Defense and assigns the responsibilities, functions, authorities, and relationships of the Director of the DoDEA. The Activity is established to reflect the reorganization of the education components with the Office of the Assistant Secretary of Defense (Force Management and Personnel).

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: R. Meiners, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301, telephone 703-697-1142.

SUPPLEMENTARY INFORMATION:**List of Subjects in 32 CFR Part 346**

Education, Military personnel, Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 346 to read as follows:

PART 346—DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

Sec.

346.1 Purpose.

346.2 Applicability.

346.3 Mission.

346.4 Organization.

346.5 Responsibilities and functions.

346.6 Relationships.

346.7 Authorities.

346.8 Administration.

Authority: 10 U.S.C. 131(b).

§ 346.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 131(b), this part establishes the DoDEA with responsibilities, functions, authorities, and relationships as outlined.

§ 346.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as the "DoD Components.") The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 346.3 Mission.

The mission of the DoDEA is to:

(a) Advise and act for the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) on all matters relative to the DoD Dependents Schools (DoDDS), section 6 Schools, and Continuing and Post-Secondary Education (CAPSE) programs.

(b) Formulate and develop policies, guidelines, and standards for the management of defense education activities and programs.

(c) Plan, direct, coordinate, and manage the education programs for eligible dependents of U.S. military personnel and civilian personnel of the Department of Defense stationed overseas in accordance with 32 CFR part 347.

(d) Plan, direct, coordinate, and manage the education programs for eligible dependents of U.S. military and civilian personnel stationed in areas prescribed in 20 U.S.C. 2362; in accordance with 20 U.S.C. 241 note; and 32 CFR part 68.

¹ See footnote 1 to § 345.5(a)(6).

² See footnote 1 to § 345.5(a)(6).

³ See footnote 1 to § 345.5(a)(6).

(e) Plan, direct, coordinate, and oversee the programs and services for continuing adult and post-secondary education for U.S. military personnel.

§ 346.4 Organization.

The DoDEA is established as a DoD Field Activity under the authority, direction, and control of the ASD(FM&P). It shall consist of:

(a) A Director, who shall be known as the Director of Education.

(b) The DoDDS which, under 32 CFR part 347, provides a free public education of high quality from pre-kindergarten through grade twelve for eligible minor dependents of U.S. military and civilian personnel of the Department of Defense stationed overseas; a free, appropriate education for such minor dependents with disabilities, ages 3 through 21; and a community college program for eligible students in Panama.

(c) The DoD section 6 Schools Office which, under 32 CFR part 345, provides a free public education for dependent children of U.S. military personnel and federally employed civilian personnel when those children are eligible for an education in DoD section 6 Schools under 20 U.S.C. 2362, 20 U.S.C. 241 note, and 32 CFR part 68. Such free public education arrangements shall be made by the Secretary of Defense either with a local educational agency or with the head of a Federal Department or Agency, consistent with 20 U.S.C. 2362.

(d) The Office of CAPSE which, under DoD Directive 1322.8,¹ provides overall policy guidance and periodic review of voluntary education programs for military personnel, including the Defense Activity for Non-Traditional Education Support. The Office of CAPSE monitors the basic and/or functional skills programs conducted within the Department of Defense for military personnel and partnerships in education; provides support within the Department of Defense for implementation of the President's goals for adult literacy; and provides policy guidance and oversight of Tuition Assistance Programs for military personnel, consistent with DoD Directive 1322.8.

(e) Other subordinate elements as are established by the Director, within the resources assigned by the ASD(FM&P).

§ 346.5 Responsibilities and functions.

(a) The Director of Education shall:

(1) Serve as the principal staff advisor to the ASD(FM&P) on the DoDDS, section 6 Schools, and CAPSE programs.

(2) Organize, manage, and direct the DoDEA, its subordinate elements, and all assigned resources.

(3) Establish subordinate offices necessary to fulfill assigned missions.

(4) Supervise, administer, implement, and evaluate the policies and procedures for the DoDDS, the section 6 Schools, and the CAPSE programs.

(5) Enter into agreements with the Military Services or other U.S. Government entities, as required, for the effective performance of the responsibilities assigned in this part.

(6) Supervise and administer DoDEA financial management activities.

(7) Develop, for issuance by the ASD(FM&P), such policy or technical guidance, regulations, and instructions as are required to effectively administer and manage the education programs established under this part.

(8) Provide DoDEA representation at meetings and deliberations of educational panels and advisory groups.

(9) Perform other functions as may be assigned by the ASD(FM&P).

(b) The Assistant Secretary of Defense (Force Management and Personnel) shall:

(1) Recommend to the Secretary of Defense policies and resources for the administration of the DoDDS, section 6 Schools, and CAPSE programs.

(2) Exercise direction, authority, and control over the DoDEA.

(c) The Comptroller of the Department of Defense shall provide technical advice and support to the Director for Education on budget and financial management activities to the DoDEA.

(d) The General Counsel of the Department of Defense shall provide legal advice on the implementation of this part.

(e) The Secretaries of the Military Departments shall provide such facilities, logistic, and administrative support as are required for the effective operation of the DoDDS, section 6 Schools, and CAPSE programs. Reimbursements for goods and services shall be made in accordance with DoD Instruction 4000.19² and DoD Directive 1400.16.³

§ 346.6 Relationships.

(a) In the performance of assigned duties, the Director of Education shall:

(1) Exchange information and advice and coordinate actions with DoD Components having collateral or related functions.

(2) Use established facilities and services in the Department of Defense and other Government Agencies, whenever practical, to achieve maximum efficiency and economy of operations.

(3) Consult and coordinate with other government and nongovernmental agencies on matters related to the mission of the DoDEA.

(b) All DoD Components shall coordinate with the Director of Education, as appropriate, on matters affecting the mission and operation of the DoDEA.

§ 346.7 Authorities.

The Director of Education is specifically delegated authority to:

(a) Execute the responsibilities and functions described in § 346.5.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5,⁴ as deemed necessary.

(c) Communicate directly with appropriate representatives of the DoD Components and other governmental and nongovernmental agencies on matters related to the DoDDS, section 6 Schools, and CAPSE programs.

§ 346.8 Administration.

(a) The Director of Education shall be a civilian selected by the ASD(FM&P).

(b) Administrative support to the DoDEA shall be provided by DoD Components.

(c) The DoDEA shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

Dated: November 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-27235 Filed 11-10-92; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 347

[DoD Directive 1342.8]

Department of Defense Dependents Schools (DoDDS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part updates the responsibilities, functions, relationships, and authorities of the Director, Department of Defense Dependents Schools (DoDDS); and changes the status of the DoDDS from a DoD Field Activity to a subordinate organizational

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 346.5(e).

³ See footnote 1 to § 346.5(e).

⁴ See footnote 1 to § 346.5(e).

element of the Department of Defense Education Activity, a newly created DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense (Force Management and Personnel). Other significant changes in this revision include the addition of the responsibilities and functions of the DoDDS relative to the Advisory Council on Dependents' Education and the Overseas Dependents' Schools National Advisory Panel on the Education of Disabled Dependents. The mission of the DoDDS is to provide a free public education from pre-kindergarten through grade twelve for eligible minor dependents of U.S. military and civilian personnel of the DoD stationed overseas; a free, appropriate public education for children with disabilities, ages 3 through 21; and a community college program for eligible students in Panama.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: R. Meiners, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC, 20301, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 347

Elementary and secondary education, Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 347 to read as follows:

PART 347—DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS (DoDDS)

Sec.

- 347.1 Purpose.
- 347.2 Applicability and scope.
- 347.3 Mission.
- 347.4 Organization.
- 347.5 Responsibilities and functions.
- 347.6 Relationships.
- 347.7 Authorities.
- 347.8 Administration.

Appendix A to Part 347—Delegations of Authority

Authority: 10 U.S.C. 131(b).

§ 347.1 Purpose.

This part:

(a) Updates the organization, responsibilities, functions, relationships, and authorities for the administration of the DoDDS, which operates schools in overseas areas.

(b) Under 10 U.S.C. 131(b), establishes, pursuant to the authority vested in the Secretary of Defense, the DoDDS, with the mission, organization,

responsibilities, functions, relationships, and authorities as prescribed herein.

(c) Under 20 U.S.C. 2701 et. seq. and 20 U.S.C. 1400 et. seq., establishes the Advisory Council on Dependents' Education (ACDE) and the Overseas Dependents' Schools National Advisory Panel on the Education of Disabled Dependents (NAP); establishes the Dependents Education Council (DEC); and, under DoD Instruction 1342.15,¹ establishes such other Educational Advisory Committees or Councils (EACs) as are appropriate.

(d) Continues to authorize publication of DoD 1342.6-M² in accordance with DoD 5025.1-M.³

§ 347.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) Members appointed to serve on the ACDE, the NAP, the DEC, and other EACs established under authority of 20 U.S.C. 2701 et seq., and DoD Instruction 1342.15.

§ 347.3 Mission.

The mission of the DoDDS is to provide, pursuant to 20 U.S.C. 2701 et. seq. and DoD Directive 1342.13,⁴ a free public education of high quality from pre-kindergarten through grade twelve for eligible minor dependents of U.S. military and civilian personnel of the Department of Defense stationed overseas; and under 20 U.S.C. 1400 et. seq. and DoD Instruction 1342.12,⁵ to provide a free appropriate education for children with disabilities, ages 3 through 21; and, under 20 U.S.C. 3731(g), to provide a community college program for eligible students in Panama.

(a) The DoDDS shall also provide programs designed to meet the special needs of:

- (1) The disabled.
- (2) Individuals in need of compensatory education.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 347.1(c).

³ See footnote 1 to § 347.1(c).

⁴ See footnote 1 to § 347.1(c).

⁵ See footnote 1 to § 347.1(c).

(3) Individuals with an interest in vocational education.

(4) Gifted and talented individuals.

(5) Individuals of limited English-speaking ability.

(6) A developmental preschool program for eligible dependents who are of preschool age.

(b) The DoDDS may also provide, to the extent funds are available:

(1) Extracurricular and co-curricular programs and activities to enrich the school-environment and experience.

(2) Student travel to compete in interscholastic programs and competitions.

§ 347.4 Organization.

(a) The DoDDS is established as an organizational element of the DoD Education Activity (DoDEA), a DoD Field Activity operating under the direction, authority, and control of the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)). It shall consist of:

(1) A Director.

(2) The Office of Dependents' Education, which is the headquarters element of the DoDDS.

(3) A subordinate organizational structure and such subordinate activities as shall be established by the Director, DoDDS, within resources authorized by the ASD(FM&P).

(b) An ACDE shall be established, in accordance with 20 U.S.C. et. seq., and DoD Directive 5105.4,⁶ to advise the ASD(FM&P) and the Director, DoDDS, on improvements to achieve and maintain a high quality public educational program.

(c) A DEC shall be established to provide a consultative relationship between the ASD(FM&P) and the Director, DoDDS, and the Commanders of Unified Combatant Commands and major Service Commands to consider questions of educational policy, and matters related to facilities, logistics, and administrative support provided to the DoDDS by the Military Services.

(d) An Overseas Dependents' Schools National Advisory Panel on the Education of Disabled Dependents shall be established to advise the Director, DoDDS, regarding the needs and requirements for the education of disabled children, as well as the rules and standards that should be developed and maintained for the operation of the system.

(e) Other EACs shall be established to ensure effective communication between school administrators at all levels of administration within the

⁶ See footnote 1 to § 347.1(c).

DoDDS and the total school community. The operation of the EACs shall be in accordance with DoD Directive 1342.15.

§ 347.5 Responsibility and functions.

(a) The Director, DoD Dependents Schools, shall perform all duties necessary to organize, manage, fund, direct, and supervise the complete operation of the DoDDS. These duties include, but are not limited to, the following duties:

(1) Serve as the principal advisor and staff assistant to the ASD(FM&P) on matters relating to overseas dependents education.

(2) As required for the DoDDS to perform its mission effectively, develop policies and systems; conduct research, analysis, and evaluation; and issue guidance and regulations.

(3) Keep abreast of developments in the elementary, secondary, and higher education field to ensure appropriate assimilation of new programs and technologies in the overseas dependents schools.

(4) Enter into agreements with or through the DoD Components and other U.S. Government entities, and form such agreements as may be required for the effective performance of the DoDDS program.

(5) Establish subordinate offices and schools necessary to fulfill the mission when practical and/or cost-beneficial.

(6) Provide recommendations and support to the ASD(FM&P) in the development and justification of school construction, modification, and/or repair projects included in annual military construction programs.

(7) Develop, publish, interpret, and maintain:

(i) DoD 1342.6-M to implement this part and other policy decisions of the Secretary of Defense.

(ii) Eligibility policy and procedures for enrollment in an overseas dependents school.

(iii) Policy and procedures for the operation and management of the ACDE, the DEC, the Overseas Dependents' Schools National Advisory Panel on the Education of Disabled Dependents, the installation and local advisory committees, and other EACs.

(iv) Policy and procedures for the delivery of education and related services for children with disabilities.

(8) Engage in collective bargaining and enter into collective bargaining agreements.

(9) Ensure that the DoDDS are operated in accordance with governing law and regulation and with appropriate internal controls.

(10) Enter into agreements with such domestic and foreign national school

entities as are necessary to ensure the delivery of educational services under 20 U.S.C. 2701 et. seq., when no overseas dependent school operated by the Department of Defense is determined by DoDDS to be reasonably available.

(11) Accept gratuitous services offered in support of DoDDS programs and mission.

(12) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9-M.

(13) Establish and operate a nonappropriated fund for the support of student activities that are not supported from appropriated funds.

(14) Establish membership in, and maintain liaison with, such professional educational associations or organizations as are necessary to maintain currency in educational developments and technologies, ensure the proper accreditation of the schools, and promote the advancement of educational goals and objectives.

(15) Serve as the Executive Secretary of the DEC.

(16) Serve as the Executive Secretary of the ACDE in accordance with 20 U.S.C. 2701 et seq.

(17) Perform other functions as may be assigned by the ASD(FM&P).

(b) The Assistant Secretary of Defense (Force Management and Personnel) shall:

(1) Recommend policies and resources for the administration of the DoDDS to the Secretary of Defense.

(2) Exercise direction, authority, and control over the Director, DoDDS, through the Director of Education, in accordance with 32 CFR part 346.

(c) The Advisory Council on Dependents' Education shall meet periodically to:

(1) Recommend to the Director, DoDDS, general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system.

(2) Facilitate the exchange of information between the Director, DoDDS, and other Federal Agencies regarding educational practices and programs that are relevant to the DoDDS.

(3) Perform such other tasks as may be assigned by the ASD(FM&P).

(d) The Dependents Education Council shall meet periodically to:

(1) Consider questions of policy relating to the DoDDS.

(2) Facilitate exchange of information between the DoDDS and the Military Services.

(3) Provide advice to the ASD(FM&P) on matters pertaining to the DoDDS.

(e) The Overseas Dependents' Schools National Advisory Panel on the Education of Disabled Dependents shall meet periodically to:

(1) Recommend to the Director, DoDDS, general policies for operation of the defense dependents' education system with respect to education of individuals with disabilities.

(2) Facilitate the exchange of information between the Director, DoDDS, and officials of other Federal Agencies regarding practices and programs that are relevant to education of individuals with disabilities.

(3) Perform such other tasks as may be assigned by the ASD(FM&P).

(f) The Comptroller of the Department of Defense shall provide technical advice and assistance to the Director, DoDDS, on budget and financial management activities of the DoDDS.

(g) The General Counsel of the Department of Defense shall provide legal advice on the implementation of this part.

(h) The Secretaries of the Military Departments, upon request, shall provide such facilities, logistics, and administrative support as are required for the effective operation of DoDDS activities and the operation of the DEC and other educational advisory committees and councils, including travel and per diem expenses of participant members. Reimbursements for goods and services shall be made in accordance with DoD Instruction 4000.19⁷ and DoD Directive 1400.16⁸. However, reimbursement shall not be required for expendable medical supplies and support provided to the DoDDS, which will be furnished and funded by the supporting activity.

§ 347.6 Relationships.

(a) In the performance of assigned duties, the Director, DoDDS, shall:

(1) Exchange information and advice and coordinate actions with DoD Components having collateral or related functions.

(2) Use established facilities and services in the Department of Defense and other Government Agencies, whenever practicable, to achieve maximum efficiency and economy of operations.

(3) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission of the DoDDS.

⁷ See footnote 1 to § 347.1(c).

⁸ See footnote 1 to § 347.1(c).

(b) All DoD Components shall coordinate with the Director, DoDDS, as appropriate, on matters affecting the mission and operation of the DoDDS.

§ 347.7 Authorities.

The Director, DoDDS, is specifically delegated authority to:

(a) Execute the responsibilities and functions described in § 347.5.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5,⁹ as deemed necessary.

(c) Communicate directly with appropriate representatives of the DoD Components and other governmental and nongovernmental agencies on matters related to the DoDDS.

(d) Exercise the operational and administrative authorities in appendix A to this part when delegated by the ASD(FM&P).

§ 347.8 Administration.

(a) The Director, DoDDS, shall be a civilian selected by the ASD(FM&P).

(b) The DoDDS shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

Appendix A to Part 347—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Assistant Secretary of Defense (Force Management and Personnel) ASD(FM&P)), or in the absence of the ASD(FM&P), the person acting for the ASD(FM&P), is hereby delegated authority as required in the administration and operation of the DoDDS to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302, and 3101 on the employment, direction, and general administration of DoDDS civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the ASD(FM&P) shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense, for the performance of DoDDS functions consistent with 10 U.S.C. 173, 5 U.S.C. 3109(b), DoD Directive 5105.4, and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the

Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DoDDS to perform this function.

5. Establish a DoDDS Incentive Awards Board and authorize cash awards to, and incur necessary expenses for, the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DoDDS or its subordinate activities, in accordance with 5 U.S.C. 4503, applicable OPM regulations, and DoD Directive 5120.15.¹

6. In accordance with 5 U.S.C. 7532; E.O. 10450, 18 FR 2489, 3 CFR, 1949-1953 Comp., p. 936; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; and DoD Directive 5200.2,¹ "DoD Personnel Security Program," as appropriate:

a. Designate any position in the DoDDS as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DoDDS for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of a DoDDS employee in the interest of national security.

7. Authorize and approve:

a. Travel for DoDDS civilian employees in accordance with Volume II, Joint Travel Regulations.

b. Invitational travel to non-DoD personnel whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DoDDS activities, in accordance with Volume II, Joint Travel Regulations.

c. Overtime work for DoDDS civilian employees in accordance with chapter 55, subchapter V, of 5 U.S.C. and applicable OPM regulations.

8. Develop, establish, and maintain an active and continuing Records Management Program pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2.²

9. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DoDDS, consistent with 44 U.S.C. 3702.

10. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M.³

11. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of DoDDS functions and responsibilities.

12. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DoDDS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

13. Approve waivers of indebtedness for DoDDS employees in accordance with 5 U.S.C. 5584.

The ASD(FM&P) may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulation.

These delegations of authority are October 13, 1992.

Dated: November 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-27236 Filed 11-10-92; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 348

[DoD Directive 5136.11]

Defense Medical Programs Activity (DMPA)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes the "Defense Medical Programs Activity (DMPA)". It replaces the Defense Medical Support Activity (DMSA) (DoD Directive 5136.10). The DMPA incorporates functions previously performed by the DMSA and has been assigned additional medical program management functions. Because of added responsibilities, it was decided that the Department of Defense create a new activity to replace DMPA.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: R. Kennedy, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC, 20301, telephone 703-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 348

Health care, Health facilities, Organization and functions (Government agencies).

⁹ See footnote 1 to § 347.1(c).

¹ See footnote 1 to § 347.1(c).

² See footnote 1 to § 347.1(c).

³ See footnote 1 to § 347.1(c).

Accordingly, title 32, subchapter R is amended to add part 348 to read as follows:

PART 348—DEFENSE MEDICAL PROGRAMS ACTIVITY (DMPA)

Sec.

- 348.1 Purpose.
- 348.2 Applicability.
- 348.3 Responsibilities and functions.
- 348.4 Organization and management.
- 348.5 Relationships.
- 348.6 Authorities.
- 348.7 Administration.

Authority: 10 U.S.C. 131(b).

§ 348.1 Purpose.

Under the authority vested in the Secretary of Defense under the provisions of 10 U.S.C. 131(b), this part establishes the DMPA as a DoD Field Activity under the direction, authority, and control of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), with responsibilities, functions, relationships, and authorities as outlined. The Defense Medical Support Activity, previously established under Defense Medical Support Activity, is hereby disestablished and its functions incorporated within the DMPA.

§ 348.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 348.3 Responsibilities and functions.

- (a) The Director, DMPA, shall:
 - (b) Develop and maintain the Department of Defense Unified Medical Program to provide resources for all medical activities.
 - (c) Develop, maintain, and provide guidance for an integrated system for planning, programming, and budgeting for medical facility military construction projects (to include initial construction, replacement, modification, modernization, and supporting facilities) throughout the Department of Defense and for managing the allocation of the financial resources approved for such projects.
 - (d) Develop, maintain, and oversee the design, enhancement, operation, procurement, and management of information systems and related communications and automated systems in support of the activities of the DoD Military Health Services System (MHSS).

(e) Manage the DoD-wide automated MHSS information systems.

(f) Provide other support for DoD military medical programs, as directed by the ASD(HA).

§ 348.4 Organization and management.

The DMPA shall consist of:

(a) A Director designated by the ASD(HA) from among personnel within the Office of the ASD(HA).

(b) Such additional subordinate organizational elements as are established by the Director within resources assigned by the Secretary of Defense.

§ 348.5 Relationships.

(a) In performing assigned functions, the Director, DMPA, shall:

(1) Coordinate actions with the other DoD Components having collateral or related functions in the areas of assigned responsibility.

(2) Maintain liaison with the other DoD Components and other governmental and nongovernmental agencies to exchange information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other Government Agencies to avoid duplication and achieve maximum efficiency and economy.

(b) The Heads of the DoD Components shall coordinate with the Director, DMPA, on all matters relating to DMPA functions and responsibilities.

§ 348.6 Authorities.

The Director, DMPA, is authorized to:

(a) Obtain from the other DoD Components, such advice, assistance, and information consistent with the policies and criteria of DoD Directive 7750.5,¹ as necessary to carry out DMPA's assigned responsibilities.

(b) Communicate directly with appropriate personnel in the other DoD Components on matters related to DMPA programs and activities.

(c) Communicate directly with other governmental agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out the responsibilities and functions assigned under this part.

§ 348.7 Administration.

(a) The Secretaries of the Military Departments shall assign military personnel to the DMPA in accordance with approved authorizations and

established procedures for assignment to joint duty.

(b) Administrative support for the DMPA shall be provided by the Director, Washington Headquarters Services.

Dated: November 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-27237 Filed 11-10-92; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE-3-3-5444; FRL-4527-7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of revised volatile organic compound (VOC) emissions regulations applicable in New Castle County, which is part of the Philadelphia, PA-DE-NJ ozone nonattainment area. The intended effect of this action is to approve Delaware's revised VOC regulations to correct deficiencies of Delaware's Ozone Attainment Plan. This action is being taken in accordance with section 110 and part D of the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on December 14, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

FOR FURTHER INFORMATION CONTACT: Mrs. Aquanetta Dickens, (215) 597-4554.

SUPPLEMENTARY INFORMATION: On October 17, 1991 (56 FR 52011), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Delaware. The NPR proposed approval

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

of Delaware's revised VOC regulations to correct deficiencies of Delaware's Ozone Attainment Plan. The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on July 6, 1990.

Background

In the November 24, 1987 Federal Register, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in Delaware and that a SIP call would be issued. (See 52 FR 45044). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date (section 110(a)(2)(H), 42 U.S.C. 7410(a)(2)(H) and section 110(k)(5), 42 U.S.C. 7410(k)(5) of the Clean Air Act, as amended, Pub. L. 101-549). On May 26, 1988, EPA sent a letter to Michael N. Castle, Governor of Delaware, pursuant to section 110(a)(2)(H) of the preamended Clean Air Act, notifying him that the Delaware SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in New Castle County.

Because New Castle County is currently designated nonattainment, the appropriate response to the SIP call would include: (1) Correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emission inventory.

In addition, although this submittal (which includes the regulatory corrections discussed above) preceded the date of enactment of the Clean Air Act Amendments of 1990, it serves to fulfill the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the New Castle County area. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement.

Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under preamended section 172(b) as the requirement was interpreted in preamendment guidance.¹ The SIP call

letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas.

New Castle County, as part of the Philadelphia nonattainment area has been classified as severe 1. Therefore, Delaware's revised regulations for New Castle County, submitted in response to the SIP call letter, also respond to the RACT fix-up requirement.

Content of Revised Regulations

On June 14, 1988, EPA sent a letter to the Director of Delaware's Air Resources Section outlining the corrections that needed to be made to Delaware's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations. The revised VOC regulations submitted by Delaware on July 6, 1990, are in response to EPA's May 26 and June 14, 1988 letters. The specific requirements of the revised regulations controlling volatile organic compound emissions and the rationale for EPA's proposed approval action are explained in the NPR and will not be restated here. Public comments were received on the NPR.

Response to Public Comments

On November 18, 1991, EPA received only one comment from the National Oil Seed Processors Association (NOPA) and the undersigned members of the vegetable oil industries submitted comments on EPA's Proposed Rulemaking. The undersigned members of the vegetable oil industries are: Corn Refiners Association, Institute of Shortening and Edible Oils, Inc., National Cotton Council, and NOPA. NOPA and the undersigned members commented on the proposed amendments to Delaware's definition of VOC.

They do not oppose EPA approval of the new definition, but they urge EPA to make clear at the time of approval that the definition of VOC does not include vegetable oils, and to include a statement that these oils are exempt in its Federal Register.

The commenters provided support documents concerning the issue that vegetable oils are not contributors to the ozone problem. The support documents were: EPA Office of Air Quality Planning Standards Report on the Impact of Declaring Soybean Oil Exempt from VOC Regulations on the Coating Program (April 1991), esp. p. 3 and conclusions 1-3., and the September 1991 Frito Lay, Inc. Study.

As an alternative, NOPA and the undersigned members stated that if EPA is compelled to conclude that vegetable oils contribute to ozone formation, they

also urge EPA to issue control guidance that would recognize the very small contribution of such sources to the ozone problem and would advise states to exempt them from control for that reason.

Response

The Delaware DNREC revised their definition of VOC to reflect current EPA guidance. The new definition deletes vapor pressure as a criterion for determining whether or not an organic compound is a VOC, and adds the requirement that any organic compound which is involved in atmospheric photochemical reactions is a VOC.

Delaware's revised definition of VOC was not intended to regulate the vegetable oil industries but to identify all potential compounds which participate in atmospheric photochemical reactions. Currently, Delaware does not have any plans to regulate vegetable oil manufacturing or processing.

In 1990, EPA determined that vegetable oils will tend to remain primarily in the condensed phase in the atmosphere, and generally will not be available to participate in the formation of photochemically-produced ozone. It is important to note that states may adopt requirements beyond minimum Federal requirements; therefore, to the extent that the State's definition includes vegetable oils, EPA cannot disapprove it. See 42 U.S.C. 7415.

Final Action

EPA is approving the Delaware SIP revision containing the revised rules for VOC emissions in Regulations 1 and 24 of Delaware's Regulations Governing the Control of Air Pollution. This action is to approve of Delaware's revised VOC regulations to correct deficiencies of Delaware's Ozone Attainment Plan.

The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to

¹ Among other things, the pre-amendment guidance consists of the Proposed Post-1987 Policy, 52 FR 45044 (November 24, 1987), the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice," and the existing CTGs.

relevant statutory and regulatory requirements.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. versus U.S. EPA*, 427 U.S.C. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

This action approving Delaware's revision to Regulations 1 and 24 to control VOCs has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication).

Filing a petition for reconsideration by the Administrator of this final rule approving Delaware's revision to Regulations 1 and 24 to control VOCs does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 9, 1992.

Stanley L. Laskowsk,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(44) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the Delaware Department of Natural Resources and Environmental Control on July 6, 1990.

(i) Incorporation by reference.

(A) A letter from the Delaware Department of Natural Resources and Environmental Control dated July 6, 1990 submitting a revision to the Delaware State Implementation Plan, effective July 3, 1990.

(B) Regulation 1—Definitions and Administrative Principles.

(C) Regulation 24—Section 1, General Provisions; section 6, Bulk Gasoline Plants; section 8, Petroleum Liquid Storage; section 9, Surface Coating Operations; section 14, Petroleum Refinery Component Leaks; and section 15, Rotogravure and Flexographic Printing.

[FR Doc. 92-26897 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0F3825/R1169; FRL-4169-5]

RIN 2070-AB78

Pesticide Tolerances for Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in honey and beeswax when present therein as a result of application to beehives. The regulation to establish a maximum permissible level for residues of amitraz was requested in a petition submitted by Nor-Am Chemical Co.

EFFECTIVE DATE: This regulation becomes effective November 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3825/R1169], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm.

3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1990 (55 FR 6311), which announced that Nor-Am Chemical Co., Wilmington, DE 19803, had submitted pesticide petition (PP) 0F3825 to EPA proposing to amend 40 CFR part 180 by establishing permanent tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for the residues of the insecticide/miticide amitraz (*N*-[2,4-dimethylphenyl]-*N*-[[[2,4-dimethylphenyl]-imino]methyl]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent) in honey at 1.0 part per million (ppm) and in beeswax at 7.0 ppm when present as a result of application to the hives.

The Agency reviewed the residue data and determined that a tolerance of 6.0 ppm should be proposed for beeswax. The petitioner subsequently amended the petition by proposing a tolerance of 6.0 ppm. This revision was announced in the **Federal Register** of September 27, 1990 (55 FR 39517).

No requests for referral to an advisory committee were received in response to the notices of filing.

Amitraz effectively controls two parasitic mites which seriously threaten the U.S. honey bee industry. Infestations of the honey bee tracheal mite (*Acarapis woodi*) can result in lower honey production and reduced survivability of hives during nonhoney flow times of the year. The varroa mite (*Varroa jacobsoni*) causes an infection in honey bees, varroasis, which results in infected bees either leaving or being driven from the colony, thus weakening or killing off the colony. It is possible for a colony to be infested with both mites. Fluvalinate and menthol are the only currently registered control measures. However, fluvalinate will only control the varroa mite, and menthol will only control the tracheal mite. Additionally, menthol is effective only when ambient temperatures exceed 60 degrees F.

During the fall and early winter, the designated time of year to treat brood

chambers with menthol, temperatures in many parts of the U.S. do not reach 60 degrees F, and menthol then will not provide adequate control of the mite. Amitraz will control both mite species with a single application, and since it is not temperature dependant, will be effective throughout the U.S. The beekeeping industry will realize substantial benefits from a product which is efficacious against both mite species, thus preventing a serious decline in pollination activity and honey production.

The toxicological data considered in support of these tolerances include the following toxicity studies:

1. A 2-year rat feeding/oncogenicity study which was negative for oncogenic effects under the conditions of the study and which had a NOEL of 50 ppm (2.5 mg/kg/bwt) for nononcogenic effects.

2. A three-generation rat reproduction study with a NOEL of 15 ppm (1.5 mg/kg/bwt); rat and rabbit teratology studies which were negative at doses up to 12 mg/kg/bwt and 25 mg/kg/bwt, respectively.

3. A 2-year mouse oncogenicity study which demonstrated an increase in the incidence of hepatocellular tumors in female mice, and a 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt which demonstrated increased blood glucose and slight hypothermia after dosing.

The reference dose (RfD), based on the 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt and a 100-fold uncertainty factor, is calculated to be 0.0025 mg/kg of body weight/day.

The 2-year mouse oncogenicity study which showed an increase in the incidence of hepatocellular tumors in female mice was referred to the Agency's Carcinogen Assessment Group (CAG) for evaluation. CAG (1986) concluded that amitraz should be classified as a possible human carcinogen, Group C. This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the *Federal Register* of September 24, 1986 (51 FR 33992). In its evaluation, CAG gave consideration to the following information:

1. The positive carcinogenic effects were found in only one species, the mouse.

2. Tumors were discovered mostly in animals at the scheduled terminal sacrifice.

3. The rat was negative for oncogenic effects at doses as high as 200 ppm.

4. There is no positive epidemiological carcinogenicity data for amitraz.

On February 12, 1986, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel

(SAP) completed a review of the data base for the Group C classification of amitraz. The SAP concluded that the weight of evidence was inadequate to clearly categorize amitraz. Amitraz has also been determined to be negative in the gene mutation, host-mediated, and dominant-lethal test systems. Studies such as the Ames bacterial test, a mouse lymphoma assay, and an unscheduled DNA synthesis in human embryonic cells have been conducted with amitraz, also with negative results. For these reasons, the SAP disagreed with the Agency classification and recommended that amitraz be classified as a Group D carcinogen (not classifiable as to human carcinogenicity).

Despite the SAP's recommendation, the Agency continued to regulate amitraz as a class C carcinogen, without quantification of the risk. However, in late 1990, the Agency decided to reexamine the weight-of-the-evidence regarding the carcinogenic potential of amitraz. The "C" classification was reaffirmed, but quantification of potential human cancer risk, using a low-dose extrapolation model (Q^*1), was recommended. This decision was based on the fact that amitraz was associated with the induction of multisite benign and malignant tumors in different strains of male and female mice. Some of these tumors (hepatocellular tumors) are considered relatively uncommon in female B6C3F1 mice.

As a result of the recommendation to quantify the potential cancer risk, a dietary risk assessment for amitraz was prepared using anticipated residues and percent crop treated information for the published uses (pears, cattle, and swine). The resulting dietary risk was calculated to be 2.9×10^{-6} . The establishment of the honey/beeswax tolerances will add an additional 0.1×10^{-6} dietary risk. The overall risk estimate may be exaggerated since a label amendment proposed by Nor-Am, and currently in review, will result in a lower residue contribution from the use of amitraz on swine. The Agency has also asked Nor-Am to reexamine its existing uses and labeling to determine if the dietary risk could be further reduced as a result of additional label modifications.

The calculated reference dose (RfD) for humans is 0.0025 mg/kg/bwt/day. This is based on a 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt and a 100-fold uncertainty factor. The anticipated residue contribution (ARC) for this chemical utilizes 4.28 percent of the RfD. The proposed tolerances will contribute 0.002331 mg/kg/bwt/day to the human diet utilizing an additional

0.093 percent of the RfD. This results in a total utilization of 4.37 percent of the RfD. The nature of the residue in plants and livestock is adequately understood. Since there are no livestock feed items in this petition, there is no expectation of secondary residues in meat, milk, poultry, or eggs. The analytical method is gas chromatography using electron detection. There are currently no actions pending against continued registration of this chemical.

Based on the above information, including the data showing minimal risks associated with this use in bee hives and the high benefits of such use, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20 The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: October 9, 1992.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR 180 part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.287 in the table therein by adding and alphabetically inserting the following agricultural commodities, to read as follows:

§ 180.287 Amitraz; tolerances for residues.

Commodity	Parts per million
Beeswax.....	6.0
Honey.....	1.0

[FR Doc. 92-27400 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP OE3836/R1167; FRL-4166-1]
RIN 2070-AB78

Pesticide Tolerances for O-Ethyl S-Phenyl Ethylphosphonodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide O-ethyl S-phenyl ethylphosphonodithioate, including its oxygen analog (O-ethyl S-phenyl ethylphosphonothioate), in or on the raw agricultural commodities bananas and plantains. This regulation to establish maximum permissible levels for residues of the insecticide and its oxygen analog in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective November 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP OE3836/R1167], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of September 2, 1992 (56 FR 40162), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) OE3836 to EPA requesting the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish tolerances for residues of the insecticide O-ethyl S-phenyl ethylphosphonodithioate, including its oxygen analog (O-ethyl S-phenyl ethylphosphonothioate), in or on the raw agricultural commodities bananas and plantains at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR

178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1992.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.221, to read as follows:

§ 180.221 O-Ethyl S-phenyl ethylphosphonodithioate; tolerances for residues.

Tolerances are established for residues of the insecticide O-ethyl S-phenyl ethylphosphonodithioate, including its oxygen analog (O-ethyl S-phenyl ethylphosphonothioate), in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus.....	0.5
Bananas.....	0.1
Beans, forage.....	0.1
Beans, vine hay.....	0.1
Beets, sugar, tops.....	0.1
Corn, field, fodder.....	0.1
Corn, field, forage.....	0.1
Corn, fresh (including sweet) (K + CWHR).....	0.1
Corn, grain (including pop).....	0.1
Corn, pop, fodder.....	0.1
Corn, pop, forage.....	0.1
Corn, sweet, forage.....	0.1
Corn, sweet, fodder.....	0.1
Peanuts.....	0.1
Peanuts, forage.....	0.1
Peanuts, hay.....	0.1
Peanuts, hulls.....	0.1
Peas, forage.....	0.1
Peas, vine hay.....	0.1
Peppermint.....	0.1
Peppermint, hay.....	0.1
Plantains.....	0.1
Sorghum, fodder.....	0.1
Sorghum, forage.....	0.1
Sorghum, grain.....	0.1
Soybeans, forage.....	0.1
Soybeans, hay.....	0.1
Spearmint.....	0.1
Spearmint, hay.....	0.1
Strawberries.....	0.1
Sugarcane.....	0.1
Vegetables, fruiting.....	0.1
Vegetables, leafy.....	0.1
Vegetables, root crop.....	0.1
Vegetables, seed and pod.....	0.1

[FR Doc. 92-27401 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300262A; FRL-4082-2]

RIN 2070-AC18

Definitions and Interpretations; Rapeseed**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This document amends 40 CFR 180.1(h) to add EPA's interpretations for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity rapeseed. The amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the

Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective November 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300262A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: Section 180.1(h) (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of the application of the terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply are listed in column B.

In the *Federal Register* of September 2, 1992 (57 FR 40163), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had requested that 40 CFR 180.1(h) be amended to add the commodity "rapeseed" to the general category of commodities in column A and add the corresponding specific commodities "*Brassica napus*, *B. campestris* and *Crambe abyssinica* (oil-seed producing varieties only which include canola and crambe)" to column B.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed

rule. Based on the data and information considered, the Agency concludes that it is appropriate to establish the general commodity rapeseed with the corresponding specific commodities *Brassica napus*, *B. campestris* and *Crambe abyssinica* (oil-seed producing varieties only which include canola and crambe) in 40 CFR 180.1(h).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. This amendment to 40 CFR 180.1(h) is equivalent for the purposes of the Regulatory Flexibility Act to the establishment of a tolerance. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by adding and alphabetically inserting the general commodity in column "A" and the corresponding specific commodities in column "B" to read as follows:

§ 180.1 Definitions and Interpretations.

* * * * *

A	B
Rapeseed.....	<i>Brassica napus</i> , <i>B. campestris</i> , and <i>Crambe abyssinica</i> (oil-seed-producing varieties only which include canola and crambe).

* * * * *

[FR Doc. 92-27402 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 2E4074/R1166; FRL-4165-9]
RIN 2070-AB78

Lagenidium Giganteum; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for residues of *Lagenidium giganteum* (a fungal organism) on the raw agricultural commodities grass forage and hay, rice grain and straw, soybeans, soybean forage and hay, and wild rice when used as a biological pesticide in accordance with good agricultural practices to control mosquito larvae. This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective November 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 2E4074/R1166], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 2, 1992 (57 FR 40161), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 2E4074 to EPA on behalf of the Agricultural Experiment Station of California and the Department of Health Services of the State of California. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish exemptions from the requirement of a tolerance for residues of *Lagenidium giganteum* in or on the raw agricultural commodities pasture grass, rice, soybeans, and wild rice.

The Lagenidiales, or water molds, consist of a small group of aquatic fungi that are parasitic on algae, other water molds, and small aquatic animal life, including certain species of the *Anopheles* and *Culex* mosquito larvae. The fungus develops within the body of the infected larvae and asexually produces motile spores that infect other larvae. When conditions are dry, the fungus reproduces sexually to form dormant spores. Available information indicate that the dormant spores germinate when exposed to water to form motile spores that infect newly hatched mosquito larvae.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the exemptions from the requirement of a tolerance will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the

Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1113, to read as follows:

§ 180.1113 *Lagenidium giganteum*; exemption from the requirement of a tolerance.

Lagenidium giganteum (a fungal organism) is exempt from the requirement of a tolerance in or on the raw agricultural commodities grasses, forage and hay; rice, grain and straw; soybeans; soybean, forage and hay; and wild rice.

[FR Doc. 92-27403 Filed 11-10-92; 8:45 am]
BILLING CODE 5560-50-F

40 CFR Part 180

[PP 9F3712/R1164; FRL-4163-9]

RIN 2070-AB78

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the fungicide metalaxyl and its metabolites in or on green hops at 2.0 parts per million (ppm). This regulation to establish the maximum permissible level for residues of metalaxyl in or on the commodity was requested in petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective September 22, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3712/R1164], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the *Federal Register* of February 28, 1989 (54 FR 8393), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 9F3712 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), propose to amend the tolerance for the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester in or on green hops from 0.5 ppm to 2.0 ppm resulting from application of the pesticide to the growing crop.

There were no comments received in response to the notice of filing.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is being sought and capable of achieving the intended physical or technical effect. The toxicological data considered in support of the tolerance include the following:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 ppm).

2. A developmental toxicity study in rats with a NOEL of 400 mg/kg bwt/day (highest dose tested [HDT]). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl did not induce gene mutations in bacteria, yeast, and

lymphoma cells in vitro with or without metabolic activation. The fungicide also caused no structural or numerical chromosomal aberrations in hamsters (in vivo nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts in vitro as the result of exposure to metalaxyl. These results suggest that metalaxyl is not genotoxic.

5. A mouse dominant-lethal study that was negative for mutagenicity.

6. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.25 mg/kg bwt/day (250 ppm). Effects found at 250 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

8. A 2-year rat chronic feeding/oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm). The LOEL is 1,250 ppm (62.5 mg/kg/day) based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

9. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver, the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group

concluded that the increased incidences of thyroid tumors in females of treated groups were not compound-related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related

carcinogenic effects were noted at any of the treatment doses, sexes, or species.

The reference dose (RfD) based on the 6-month dog feeding (NOEL 6.25 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.060 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerance regulations and the tolerance established here is 0.0112 mg/kg bwt/day and utilizes 18.7 percent of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods (capillary N/P GLC) are available for enforcement purposes. Because of the long lead time from establishing the tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5232.

The pesticide is considered useful for the purpose for which the tolerance is sought. Existing meat and milk tolerances are adequate to cover any secondary residues from the feed use of metalaxyl in conjunction with proposed tolerances. Based on the information and data considered, the Agency concludes that the amendment of the tolerance for green hops will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee proscribed in 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or

more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (40 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 22, 1992.

Douglas D. Campit

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408(a) is amended in the table therein by revising the entry for hops, green to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Hops, green.....	2.0
* * *	*

[FR Doc. 92-27404 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 483

[BPD-477-F]

RIN 0938-AD66

Medicare and Medicaid; Charges to Residents' Funds in Nursing Homes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule protects the personal funds (including personal needs allowances) of residents in skilled nursing facilities (SNFs) and nursing facilities (NFs) whose care is paid for by Medicare and Medicaid. It sets forth the items and services that are included in program payment and those for which a facility may charge residents. The regulations are required by section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 and sections 4201 and 4211 of the Omnibus Budget Reconciliation Act of 1987.

DATES: These regulations are effective October 1, 1993. However, we will not hold a State out of compliance with the requirements if the State submits preprinted plan amendments and required attachments by 90 days from the receipt of the preprint.

FOR FURTHER INFORMATION CONTACT: Martha Kuespert, (410) 966-1782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute

The Senate Report (Sen. Rep. No. 95-453) that accompanied the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95-142) indicated that investigations by the General Accounting Office, the Senate Special Committee on Aging, and various State investigators revealed misuse of residents' personal funds by some nursing homes. One form of abuse involved facilities charging residents for items and services that should be paid by Medicare or Medicaid.

Congress addressed this issue in section 21(b) of Public Law 95-142, which set forth a provision regarding the proper use of residents' personal funds by skilled nursing facilities (SNFs) and intermediate care facilities (ICFs). (On October 1, 1990, SNFs and ICFs participating in the Medicaid program became nursing facilities (NFs) to conform to provisions of the Omnibus Budget Reconciliation Act of 1987 (Pub.

L. 100-203.) Specifically, Public Law 95-142 required the Secretary to issue regulations defining those costs that may be charged to the personal funds of Medicare or Medicaid residents of SNFs or NFs and those costs that are to be included in the reasonable cost or reasonable charge for Medicare extended care services or for NFs under Medicaid. At the time this law was enacted, HCFA believed that a combination of existing law, current Medicare and Medicaid regulations, manuals, and policy transmittals that define those services for which a provider will or will not be paid was sufficient to meet the intent of section 21(b). However, sections 4201 and 4211 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which add sections 1819(f)(7) and 1919(f)(7) of the Social Security Act (the Act), make it clear that more specific regulations implementing section 21(b) must be promulgated.

Section 4201(a) of Public Law 100-203 requires the Secretary to publish regulations that define those costs which may be charged to the personal funds of Medicare patients in SNFs and those costs which are to be included in the reasonable cost (or other payment amount) for extended care services. Section 4211(a) of Public Law 100-203 requires the Secretary to publish regulations that define those costs which may be charged to the personal funds of Medicaid patients in NFs and those costs which are to be included in the Medicaid payment amount.

B. Regulations

Currently, regulations at 42 CFR 483.10(c)(8) state that SNFs in the Medicare program and NFs in the Medicaid program may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicare or Medicaid. Medicare regulations at § 411.15 exclude personal comfort services (except as necessary for the palliation or management of terminal illness) from Medicare coverage. Therefore a SNF may charge a Medicare beneficiary for these services. Section 489.32 establishes conditions under which a SNF may charge a Medicare beneficiary for providing items and services that are more expensive than or in excess of services covered under Medicare.

Medicaid regulations at § 447.15 prohibit NFs from requiring residents to supplement Medicaid payments for items and services that are covered, except for cost-sharing obligations. These regulations provide that under the State plan, each Medicaid agency must

limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid to them by the Medicaid agency for items and services furnished to recipients. The Senate Committee on Finance Report No. 744, dated November 14, 1967, stated in part:

Any limitations in supplementation are not intended to preclude additional payments for the reasonable costs or charges for nonstandard nursing home services such as * * * telephone, television. * * *

Nonstandard services are those not included in the State plan. Therefore, NFs are permitted to charge Medicaid residents a reasonable price for nonstandard services. Income protected for the personal needs of the recipient in accordance with § 435.725 may be used to pay for these types of charges.

II. Provisions of the Proposed Rule

On March 20, 1990, we published a proposed rule in the *Federal Register* (55 FR 10256). In it we proposed to fulfill the requirements imposed by section 21(b) of Public Law 95-142, and sections 4201 and 4211 of Public Law 100-203. We proposed requiring that facilities:

- (1) Notify residents of items and services for which they may be charged if they request them; and
- (2) Not require residents to purchase items or services in order to be admitted or to continue to stay in the facility.

Specifically, we proposed expanding the standard at § 483.10(c)(8), which currently states that the facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare. We proposed changing the existing rule by specifying the required and optional services that are paid by Medicare under the SNF benefit and by Medicaid under the NF benefit and are not to be charged to a Medicare beneficiary or Medicaid recipient. We proposed providing that a facility may charge residents who request more expensive or extra services the difference between what the program pays and the cost of the item or service, in accordance with § 489.32.

In the expanded standard at § 483.10(c)(8), we proposed listing categories of items that may be charged to residents and, with respect to requested items and services, proposed setting forth these requirements:

- The facility must not charge a resident for any item or service not requested by the resident.
- The facility must not require a resident to request any item or service

as a condition of admission or continued stay.

- The facility must inform the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

Similarly, we proposed revising the standards for ICFs/MR at § 483.420 to provide that the facility must comply with the same provisions with respect to items or services that may be charged to residents' funds that we proposed at § 483.10(c)(8).

Because it would not be administratively feasible to develop an all-inclusive set of items and services for which payment is made under Medicare or Medicaid at § 483.10(c)(8), we listed categories of items and services. We believe that most categories were self-explanatory; however, for purposes of that notice of proposed rulemaking, we developed a list to clarify the statement at § 483.10(c)(8)(i)(E). We said that routine personal hygiene items and services include but are not limited to: shampoo, hair conditioner, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razors, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotions, tissues, cotton balls, cotton swabs, deodorant, incontinence supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over-the-counter drugs (such as aspirin, acetaminophen, and cough syrup), nail hygiene, hair hygiene, shampoos, bathing, shaving, personal laundry, and incontinence care.

We invited comments on this issue both with respect to whether there should be a specific listing in the regulations of items and services such as the one provided above and as to whether this category should be expanded or limited. We were aware that there are additional items and services that many believe should be available to residents without charge. These include a variety of medical items and services such as prescription drugs and eyeglasses. We limited the items and services that may not be charged to residents to routine personal hygiene items, including personal laundry, and services paid under the Medicare and Medicaid programs, but we invited public comments as to whether personal laundry and other services should be paid for by the resident.

We stated that compliance with the requirements of this proposed rule

would be reviewed as part of the survey and certification process, and that therefore, noncompliance could affect continued facility participation in Medicare and Medicaid.

We also stated that this rule will affect State plans under the Medicaid program. We are developing a separate notice of proposed rulemaking that would define "nursing facility services" as including the items and services identified at § 483.10(c)(8)(i). Therefore, when that proposed rule is made final, States will be compelled to cover the items and services at § 483.10(c)(8)(i) under their State plans as NF services.

Finally, we stated that upon finalizing the March 20, 1990 proposed rule, we would issue a revised State plan preprint to implement the final requirements that apply to the Medicaid program, and that States would have 90 days from receipt of the preprint to submit their State plan changes and required attachments to the appropriate HCFA regional offices.

III. Discussion of Comments

We received 672 timely items of correspondence in response to the March 20, 1990 proposed rule. The comments were primarily from SNFs, ICFs/MR, NFs, State government agencies and departments, health care associations, and individuals. The comments and our responses to these comments are as follows:

General comments

Comment: Many of the comments we received on the proposed rule were based on the assumption that all the services required to be provided by SNFs and NFs were required to be listed in the regulation and that payment to the SNF or NF itself was required to encompass payment for all the services listed. It was suggested that publication of a list that included specific mention of each covered item and service in the context of a regulation requiring that payment be made to the facility for all listed items was the only way to implement sections 1819(f)(7) and 1919(f)(7) of the Act and section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977. Commenters suggested a wide variety of individual services they believed should be included in such a list. Commenters also asserted that we were proposing to prohibit facilities from charging residents for some items not included in the list of required services.

Response: These regulations implement section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 and sections 1819(f)(7) and 1919(f)(7) of the

Act. These provisions of the law require that the Secretary issue regulations on three areas of services in nursing homes. One area, identical for both the Medicare and Medicaid programs, was to "define those costs which may be charged to the personal funds of residents" who are receiving covered NF (in the case of Medicaid) or SNF (in the case of Medicare) services. The statutory language with respect to this requirement was the same in sections 1819(f)(7)(A) and 1919(f)(7)(A) of the Act.

The second and third areas relate separately to the Medicare and Medicaid programs. For Medicare, the requirement is to define those costs "which may be included in the reasonable cost (or other payment amount) under this title for extended care services". For Medicaid, the requirement is to define those costs "which are to be included in the payment amount under this title for nursing facility services". This statutory language does not, in our view, require that payment be made under the SNF and NF benefits for all of the services that are required to be provided to SNF and NF residents. Rather, both the Medicare and Medicaid programs (and within the Medicaid program, the separate State programs) provide for various options under which some of the services may (or must) be provided under agreements or arrangements with other entities. Depending upon the circumstances, payment may be made through the NF or SNF or directly to the other entity. (For Medicare, when services are furnished under arrangements, payment is made to the SNF.)

Under the Medicare program, the services required to be provided by a SNF are listed in section 1819(b)(4) of the Act while the services that are covered in a SNF are defined in section 1861(h), which enumerates those services of SNFs that can be covered under the Medicare program. Some of these services are required to be provided directly by the SNF while other services may be provided under arrangements with others or with a hospital with which the SNF has a transfer agreement. Still other services may be covered under Medicare part B, and payment for them may be made directly to the provider or practitioner. Some services may be covered either way, for example, a catheter may be covered under part A or may in some cases be covered as a prosthetic device under part B. As a result, it is not possible to list exhaustively services which are always included in SNF costs.

Under the Medicaid program, there is not a separate listing of covered NF services and the services required to be provided by a NF. Section 1919(b)(4) of the Act lists both sets of services. However, the law permits these services to be provided by the facility or for the facilities to arrange for their provision, and the law does not require that Medicaid NFs be financially responsible for services provided under arrangements by other providers, though it is often possible for NFs to do so, and States follow various strategies with respect to some of the items and services involved. For example, a number of States pay for the drugs used by NF residents under their drug benefits, making payments directly to the pharmacy that furnishes the prescriptions. Thus, it is not possible for us to provide an exhaustive list of items and services that must be included in the payment amount under Medicaid "for NF services" because payment for some of the services may be through benefits other than the NF benefit.

In addition, as noted above, the range of services covered under the Medicare SNF benefit, as described in section 1861(h) of the Act, is different to some extent from the range of services listed in section 1819(b)(4) of the Act that describes the services and activities that a SNF must provide to the extent needed to fulfill all written plans of care. As a result, some of the services provided to SNF patients may well come from providers or practitioners other than the SNF and be paid for outside the SNF payment system. As in the case of dental services, some services may be the responsibility of the resident because they are not covered under the Medicare program.

For these reasons, it is not possible or desirable at this point to attempt to compile a detailed list of the services that would be included in either the Medicare or Medicaid payment to a SNF or NF. There are too many differences between the Medicare and Medicaid programs to compile a single list for both and too many possibilities for payment outside the SNF or NF payment system to compile exhaustive lists for the programs separately. Accordingly, we have retained the general list provided in the proposed rule, revised as appropriate based on the public comments we received (which are discussed below).

We would like to emphasize that this regulation does not address the full range of services that comprises the SNF or NF benefits and does not relieve facilities from their responsibility to furnish all of the services required to be

provided by sections 1819(b)(4) and 1919(b)(4) of the Act, and by Federal regulations at 42 CFR part 483, subpart B. It also does not excuse States from funding required services or prevent Medicare payment from being made for all extended care services listed in section 1861(h) of the Act. Instead, the regulation simply reflects our view of the services, which, at a minimum, must be included in Medicare or Medicaid payment to a facility as extended care services or NF services respectively.

Comment: Several commenters requested that we allow States to determine what they will cover under Medicaid.

Response: As indicated above, section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 and section 1919(f)(7) of the Act require the Secretary to issue regulations which define those items and services that are included in Medicaid payment.

Therefore, at a minimum, States must ensure that the items and services identified by the Secretary are included in the Medicaid payments. However, States may require that additional items and services be included in payment under Medicaid.

Comment: A commenter asked that we define residents' personal funds.

Response: Personal funds are those funds that belong to a resident.

Comment: A commenter believed that these requirements should be made appropriate for demographic changes in the future, and we should consider future acts of Congress to make them so.

Response: We cannot be certain of any future conditions, demographic or otherwise. We will revise these rules if it becomes necessary to do so.

Comment: One commenter believed that we were requiring facilities to provide all included services directly and protested this result.

Response: We have not required facilities to provide all included services directly (except when required by regulations or law). However, the facility must ensure that the included items and services are provided at no charge to the resident.

Comment: One commenter believed that there should be punitive measures for those who do not comply with regulations; another commenter believed that penalties other than decertification should be applied to facilities that do not comply with requirements; and another commenter believed that compliance with these regulations should be checked by auditors rather than by surveyors. One commenter asked how HCFA will monitor to determine whether all personal hygiene items are furnished by facilities.

Response: We do not need to monitor the source of all personal hygiene items. We have not prohibited residents from purchasing their own personal hygiene items if they wish or from receiving them from family or friends; we have only required facilities to provide them when needed without charging residents. This rule applies to facilities and States. Facility behavior in relation to residents is monitored by surveyors. The interpretive guidelines regarding the current prohibition against facilities charging residents for items and services for which payment is made by Medicare or Medicaid will be revised to enable surveyors to determine whether resident funds are being used to pay for items and services covered by Medicare or Medicaid.

States are required by section 1902(a)(28) of the Act to pay for all of the items and services specified by this regulation and to provide a list of the items and services included in payment to NFs. States also are required to submit yearly State plan amendments providing for appropriate payment to NFs. The amendments must contain detailed descriptions of the methodology used in determining the payment rate as required by section 4211(b) of Public Law 100-203 as amended by section 4801(e)(1)(B) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). Both central and regional offices of HCFA have a role in approving and monitoring State Medicaid plans. In this connection, we will use HCFA staff, including auditors, to meet any enforcement need that arises. We plan full and appropriate enforcement of this and all other requirements. Facilities that do not comply with regulations may be subject to a wide range of penalties, ranging from directed plans of correction to decertification.

Comment: A few commenters had questions or recommendations on when these regulations should become effective. One commenter suggested that these regulations be tested before national implementation. One commenter asked that we not make so many changes at one time. A couple of commenters believed that we should postpone adding personal laundry or that we should give States time to allocate funds for coverage of personal laundry. Some commenters were concerned about payment of services provided prior to State adjustment of rates.

Response: We do not believe that testing these regulations prior to implementation or implementing them in stages is necessary. However, facilities should not be expected to operate with payment rates that do not contain

payment for all included services. Section 4211(b)(2) of Public Law 100-203 states that States must annually reevaluate their NF payment amounts by October 1. Therefore, we have set October 1, 1993 as the effective date of these regulations.

Section 483.10(c)(8)—Limitation on Charges to Personal Funds

Comment: One commenter asked that we clarify that facilities may charge coinsurance beyond the Medicare coinsurance rate when Medicare is secondary and some other payor is primary.

Response: These regulations are not intended to change the rules for application of cost sharing such as coinsurance, deductibles, and copayments. Specific limitations on charges to beneficiaries when Medicare is not primary are discussed in 42 CFR 411.35. Coinsurance beyond the Medicare coinsurance rate is not included in the amounts that facilities are permitted to collect from beneficiaries when Medicare is secondary to another payor. We also would like to emphasize that the exemption of certain Medicaid residents from cost sharing (at section 1916(a)(2)(C) of the Act and 42 CFR 447.53(b)(3)) does not change as a result of these regulations.

Comment: A few commenters had expressed concern about how much facilities should be allowed to charge residents for requested items and services that are more expensive than or in excess of covered items and services. Some commenters requested that facilities be allowed to make a profit or that they be allowed to charge the full cost of the items and services or the full cost of procuring the items and services. A few commenters believed facilities should not be allowed to charge for more expensive items and services. One commenter asserted that facilities should only be allowed to charge the difference.

Response: Regulations at § 489.32 state that facilities may charge residents the difference between requested services that are more expensive or in excess of covered services. We have not proposed a change to this requirement, and we believe that it would be inappropriate to change it without such a proposal. We note that the statutory basis for this requirement is found in section 1866(a)(2)(B) of the Act. Also, while this requirement generally applies to Medicare providers, we have applied it to both SNFs and NFs for purposes of this regulation under the authority

granted in sections 1819(f)(1), 1919(f)(1), and 1902(a)(19) of the Act.

We emphasize that, at § 447.15, NFs are prohibited from charging residents or their families for covered services. For example, nursing services are covered under Medicaid. Even if a resident requires more nursing care (or more expensive nursing care) than the usual resident in a particular NF, that nursing care still is covered under Medicaid, and no additional charge may be made. However, limits may be placed on the coverage of items and services included in Medicaid payment. For example, a State may elect not to pay for private rooms or other luxury versions of standard items. If a resident decides to purchase such an item, a facility may charge the difference between the covered item and the facility's customary charge for the desired item. We have made this clarification in the regulations at § 483.10(c)(8).

Comment: Many commenters believed that families should be responsible in some form for residents' care. Other commenters wanted us to prohibit families from being charged for any portion of residents' care.

Response: The Medicaid program prohibits charges to families for the care of Medicaid residents. While facilities may not charge families for covered items and services, family members and others may purchase noncovered items and services.

Comment: A large number of commenters expressed concern about sufficient facility payment, both for items and services defined in the proposed rule and for items and services already covered. Some commenters believed that these rules would create a burden for a variety of individuals and entities, including private paying residents, facilities, and others. Many commenters expressed concern that facilities would be expected to absorb costs for the items and services for which we have prohibited them from charging residents or for various items and services which we did not address in the NPRM. A few commenters asked that we discuss facility charges for items and services covered in the Medicaid rate. A few commenters asked that we mandate a national uniform Medicaid rate. A few commenters asked where the funds for including the items and services would come from. Some commenters indicated that States do not have enough money to provide some or all of the services we proposed to include in the daily rate. Many commenters indicated that current rates are not sufficient to cover current costs. Several commenters believed that

included services should be covered in the daily rate.

Response: These regulations do not deal with rate setting. They only deal with the issue of what items and services are included in the rates when they are set. For Medicaid, section 1902(a)(13) of the Act requires States to provide payment at rates that are reasonable and adequate to meet the costs incurred by efficiently and economically operated NFs. Furthermore, section 4211(b)(2) of Public Law 100-203 requires States at a minimum to reevaluate their State plans annually to assure proper payment for services required under the law. If a State's payment rate is insufficient to comply with the law, HCFA may pursue the compliance process in section 1904 of the Act and our regulations at 42 CFR part 430. Although we have not required facilities to absorb costs for the items and services for which they may not charge residents, we would like to emphasize that NFs under Medicaid are required to accept Medicaid payment as payment in full; they are not permitted to charge for items and services for which they do not believe they were adequately paid under the State plan. Because the law allows each State to decide its Medicaid payment rate, it would be inappropriate for us to set a national per diem rate. Under Medicare, SNF costs are paid on a reasonable cost basis, which we believe allows for sufficient payment to SNFs.

Comment: A few commenters believed that prohibiting facilities from charging for various items and services that we proposed could not be charged to residents' personal funds will cause various hardships such as staff cuts, decreases in quality of services currently provided, and decreases in patient care.

Response: We have not placed any new financial burdens on facilities, so we do not believe that this regulation will cause the effects about which commenters were concerned.

Comment: Some commenters believed that it is unfair to private paying residents for the government to pay for the care of Medicare and Medicaid residents when they have to pay for their own care or that requiring Medicare beneficiaries and Medicaid recipients to pay for personal hygiene items and services would help control costs and make them appreciate their care. One commenter believed that Federal and State programs should not pay beyond basic care.

Response: By law, Medicare beneficiaries and Medicaid recipients can receive coverage of SNF and NF care, respectively. Since personal

hygiene items and services are covered under the SNF and NF benefits, it is not legal to charge residents for them. We have not required that luxury items and services be included in payment from Medicare or Medicaid.

Comment: A few commenters believed that, by requiring certain items to be included in payment to facilities, we were not recognizing that individuals have differing levels of need.

Response: We certainly recognize that individuals have differing levels of need; however, the theory behind payment by rate is that disparate individual needs average out and thus an average payment rate can be determined.

Comment: A few commenters believed that these rules would allow too much money to accrue in residents' accounts, making individuals ineligible for Medicaid. Other commenters believed that the size of the personal needs allowance is too small or that the personal needs allowance should be increased to allow residents to purchase their own personal items and maintain their dignity.

Response: We believe that most Medicaid recipients have incomes sufficiently limited to prevent the accumulation of wealth as a result of these regulations. Also, facilities are required by regulations at § 483.10(c)(5) to notify residents when they are within \$200 of losing their benefits. The amount of the personal needs allowance is determined legislatively, and the Secretary does not have the authority to increase or decrease it. Meeting personal hygiene needs through increased individual allowances is not consonant with the law, which requires that personal hygiene items and services be included in payment from Medicare and Medicaid (see sections 1819(f)(7) and 1919(f)(7) of the Act).

Comment: A number of commenters believed that these regulations would have a significant impact and should therefore be considered as a major rule. Commenters also supplied a variety of estimates of costs they believed would be incurred if various items and services were included in Medicare and Medicaid payment.

Response: We have been unable to verify commenters' cost estimates. Because some commenters strongly believed that the regulation is a major rule, however, we have voluntarily prepared a regulatory impact and flexibility analysis. This analysis is found in section V of this preamble.

Comment: A few commenters made suggestions about the types of accounts facilities are required to maintain for residents.

Response: This rule does not discuss such accounts and we have therefore not addressed these comments.

Section 483.10(c)(8)(i)—Services included in Medicare or Medicaid payment

Comment: A commenter believed that the items already covered are sufficient for patient care.

Response: This regulation does not significantly enlarge the scope of items and services covered under Medicare and Medicaid, and we believe that those items and services that we have specified as included in payment from Medicare and Medicaid are necessary to ensure a reasonable quality of care and life.

Comment: A number of commenters believed that prohibiting facilities from charging for certain items and services, especially personal hygiene items and services, would impair residents' quality of life, freedom of choice, or dignity.

Response: We believe that residents must have basic necessities to function properly and receive maximum benefit from their care. If facilities are permitted to charge residents for these essentials, when many of them are unable to pay, then it is likely that residents will go without, impairing their care, quality of life, and dignity. Also, we note that we have not prohibited residents from purchasing or receiving items and services from outside entities and families and friends, we have only required facilities to provide them to residents who need them without charging.

Comment: Commenters suggested many specific items and services for which residents should not be charged. Some commenters provided suggestions in conjunction with their belief that all covered items and services should be included in payments to SNFs and NFs. Other commenters suggested that facilities should be required to furnish certain specific items (some even suggested that certain brands be required). Some items and services were suggested for inclusion in the rate due to commenter belief that it would be more economical to include them in the rate than through other Medicare or Medicaid benefits.

Commenters had the following suggestions for items that should not be charged to residents' personal funds: Gloves for infection control; flu vaccinations; equipment and supplies ordered by a physician; wheelchairs; canes; walkers; snacks; items required by residents' care plans; supplies, equipment, and transportation related to activities; all items in staff's daily activities; vitamins and other nutritional

or dietary supplements; salt and sugar substitutes; colostomy and ileostomy supplies; sprays and ointments for the treatment of pressure sores; tube feedings; oxygen and oxygen equipment; catheters; medically necessary medical equipment; medically necessary noncovered items and services; supplies such as hospital gowns, water pitchers, glasses, and straws; eggcrate decubitus ulcer pads; medical supplies such as underpads.

Commenters also suggested that the following services should be included: Social services; pastoral care; individual and group therapy; rehabilitation or habilitation services provided by facility staff to carry out each resident's plan of care; pharmaceutical services; eye care; dental services; services required by residents' care plans; transportation to and from medical appointments, not including ambulance services; services in staff's daily activities; escorts to medical appointments; fees charged by medical professionals for services requested by the facility that do not meet the requirements for Medicaid payment.

In addition, commenters suggested the following general categories of items and services that they believed should not be charged to residents' funds: (1) Items and services necessary to implement residents' care plans and maintain compliance with Medicare and Medicaid requirements, (2) items and services required to be provided by the Medicare or Medicaid programs, (3) items and services covered under the State plan, (4) items and services discussed in sections 1819(b)(4) and 1919(b)(4) of the Act, and (5) items and services ordered by a physician or otherwise necessary for the care of the resident. A few commenters expressed general agreement with the items and services listed.

Response: While many of the items and services suggested to be included in the rate can be covered under Medicare and Medicaid, we have not included most of them for the following reasons. First, as indicated earlier in this preamble, the purpose of this regulation is to define those items and services that must be included in payment under the SNF and NF benefits, not to define all covered items and services. We do not wish to disturb existing practices in many States that permit payment for covered items and services such as drugs, specific supplies, or therapies using independent rates developed in connection with other specific Medicaid benefits because we believe such practices can promote efficiency in administration. Therefore, we have not included any of the suggested items and

services that can be covered under benefits other than the SNF and NF benefits (for example, dental services, pharmaceutical services, items and services discussed in sections 1819(b)(4) and 1919(b)(4) of the Act, and services covered under the State plan). This does not change the fact that all items and services facilities are required to furnish are covered services under Medicare and Medicaid, and it does not permit facilities to charge residents for covered items and services.

Second, we do not believe it is possible to create an exhaustive list of items and services that are included in Medicare or Medicaid payment to SNFs and NFs. We also believe it would be inappropriate for us to develop such a list because it would create the impression that facilities are required to use certain items or provide certain services to all residents. Facilities have a wide range of options for items and services to use in meeting the needs of residents; we do not wish to limit their discretion in determining what best meets the needs of residents or to interfere in the practice of medicine. For example, § 483.25(c)(2) requires facilities to ensure that residents receive the treatment necessary to promote healing of bedsores. The treatment considered necessary may vary from facility to facility. If we specified, as commenters suggested, that eggcrate decubitus ulcer and sprays and ointments for the treatment of pressure sores are included, then facilities might feel constrained to use only the specified items and might refrain from using new or better treatment. There are substitutes for virtually all of the specific items suggested. Moreover, all items and services that are required to be provided under sections 1819(b)(4) and 1919(b)(4) of the Act (and in the case of Medicare, are also included in 1861(h) of the Act) are covered and must be included in the rate unless coverage under benefits other than the SNF or NF benefit is possible. Thus, we believe that a statement of general categories of required items and services is a better approach than a detailed list including the suggested items.

We have also not required that any noncovered items and services be included in payment to SNFs and NFs. For example, under Medicare, there is a statutory exclusion relating to dental care. Medically necessary noncovered items and services and services of medical professionals that do not meet the requirements for Medicaid payment are also examples of noncovered items and services.

The reader should note that we have added medical social services to the general list of items and services contained in the regulation.

Comment: A few commenters wanted to know whether this rule would change current practices that permit facilities to bill some of the required items and services directly to Medicaid. One commenter asked if this rule would require States to cover the items and services for which residents may not be charged. One commenter believed that individuals who are licensed should not be paid through the per diem rate.

Response: The items and services in § 483.10(c)(8)(i) are included in the per diem rate, and facilities may not seek Medicaid payment for them outside of the NF benefit. As we indicated in the NPRM, we are developing a separate rule which will define NF services as including the services in § 483.10(c)(8)(i). Whether or not an individual is licensed does not have an impact on whether payment for his or her services is included in the per diem rate although some individuals who are licensed, such as physicians, may seek separate payment.

Comment: A commenter believed that we should clarify that these items and services are routine items and services.

Response: The only items and services that are routine are routine personal hygiene items and services. The other items and services may or may not be considered to be routine. We have clarified the nature of the other items and services in the regulation.

Comment: A commenter believed that facilities should not be permitted to encourage other providers of medical supplies or services to solicit payment from family members, friends, or volunteers for supplies or services related to the care of a resident.

Response: If residents or their families choose to purchase from outside entities items or services not furnished by facilities, then neither HCFA nor facilities have the right to prohibit them from doing so. If a resident purchases items or services from an outside entity, the outside entity can seek payment from the resident. Nevertheless, a facility may not shift its responsibility to pay for items and services included in payment from Medicare or Medicaid to residents.

Section 483.10(c)(8)(i)(A)—Nursing Services and Specialized Rehabilitative Services

Comment: Several commenters were concerned that we proposed that facilities could not charge residents for specialized rehabilitative services. Many commenters believed that

specialized rehabilitative services could be paid as separate cost items or provided by an outside supplier and feared that facilities would not receive adequate payment for the services if they were paid through the per diem rate. One commenter asked that we define specialized rehabilitative services.

Response: As discussed earlier in this preamble, some services have many possible sources of payment. Because payment for many therapies that can be considered to be specialized rehabilitative services can currently be obtained through benefits other than the SNF and NF benefits, we have deleted specialized rehabilitative services from the list of items and services that must be included in payment from Medicare and Medicaid under the SNF and NF benefits. We emphasize that sections 1819(b)(4) and 1919(b)(4) of the Act require facilities to provide specialized rehabilitative services. Removing specialized rehabilitative services from the list of items and services that are included in payment from Medicare and Medicaid does not relieve facilities from their responsibility under sections 1819(b)(4) and 1919(b)(4) of the Act to provide these services directly or arrange for them. Examples of specialized rehabilitative services are physical therapy, speech language pathology, and occupational therapy. The requirements for facility provision of specialized rehabilitative services are at § 483.45.

Section 483.10(c)(8)(i)(B)—Dietary Services

Comment: A commenter believed that we should require nutrition services as required under Medicaid regulations. One commenter believed that dietary services should include parenteral and enteral nutrition therapy. A few commenters believed that facilities should not be allowed to charge residents for salt and sugar substitutes, water pitchers, glasses, straws, or snacks.

Response: Medicaid requires dietary services in § 483.35. In this final rule, we make it clear that facilities may not charge for dietary services required by this section of the regulations. Salt and sugar substitutes, glasses, water pitchers, straws, and some snacks are included in dietary services. Facilities are required to provide or arrange for parenteral and enteral nutrition items by § 483.25(k). However, parenteral and enteral nutrition therapy can be covered under benefits other than the SNF and NF benefits, and we do not believe that we should limit payment to payment from the SNF and NF benefits.

Section 483.10(c)(8)(i)(E)—Personal Hygiene Items and Services

Comment: We received a large number of comments on our proposal to prohibit facilities from charging residents for personal hygiene items and services. Several commenters believed that facilities should be allowed to charge residents for some or all personal hygiene items, personal hygiene services, or both. Some commenters were concerned that the potential for excessive use of items and services by a resident was not adequately addressed. A few commenters asked that caps be placed on the amounts of items facilities are expected to provide. One commenter believed that facilities should be required to absorb costs for personal hygiene items not covered for Supplemental Security Income (SSI) recipients.

Response: Sections 1819(f)(7)(A) and 1919(f)(7)(A) of the Act state that the Secretary must promulgate regulations that define those items and services that are included in payment from Medicare and Medicaid and those for which facilities may charge residents. Sections 1819(f)(7)(B) and 1919(f)(7)(B) of the Act state that, if the Secretary does not promulgate such regulations, then the items and services for which payment is made under Medicare or Medicaid are at least personal hygiene items and services. Therefore, we believe that Congress intended these regulations to prohibit facilities from charging residents for personal hygiene items and services. We have not placed caps on amounts of items and services facilities are required to provide because facilities must provide items and services in sufficient quality and quantity to meet the needs of residents. Facilities do not have to absorb costs for noncovered items or services for any residents.

Comment: Many commenters responded to our request for feedback on whether to include a list of personal hygiene items and services in the text of the regulations. A large number of commenters believed that no list should be included in the regulations, citing the impossibility of developing and maintaining a complete list as well as other reasons. A few commenters believed that we should specify that a list may not be used in determining compliance with the requirement that facilities may not charge for personal hygiene items and services. A few commenters believed that the list should be specific and contain all the personal hygiene items and services for which facilities may not charge residents. A

few commenters believed that a list is beyond the realm of government or that entities other than HCFA should create a list. A few commenters requested that no list of personal hygiene items and services appear in the preamble of the final regulations. However, a large number of commenters said that a list of personal hygiene items and services should be included in the text of the final regulations for several reasons, including that a list would help eliminate confusion and disputes on what is covered.

Response: We have placed the list of examples of personal hygiene items and services included in the preamble of the proposed rule in the text of the final regulations because we believe that such a list is necessary to provide guidance as to what constitutes personal hygiene items and services. While we recognize that the list may not be complete, because we have indicated that personal hygiene items and services include but are not limited to the items and services in the list, we believe that sufficient latitude is given to include additional items and services that may be included in this category. We have not placed any restrictions on use of the list in determining compliance because we believe the list should be so used.

Comment: A large number of commenters indicated their understanding that the list of personal hygiene items and services exceeds what are considered covered items and services under Medicare and Medicaid. A few commenters mentioned specific items and services that are not included in their State's Medicaid rate. Because some items and services on the list are not covered by certain States, some commenters requested a raise in Medicaid rates. A few commenters asked how facilities can recover costs for items and services that may not be charged to residents' funds when some items are not covered under Medicare.

Response: The personal hygiene items and services listed in this final regulation are required to be covered under both the Medicare and Medicaid programs by virtue of Public Law 100-203 and other regulations issued regarding nursing home reform that have altered 42 CFR parts 440 and 447. As we have noted, State Medicaid programs must take account of these requirements in connection with rate setting. With respect to Medicare, these are allowable SNF costs.

Comment: Many commenters responded to our request for feedback on the content of the list of personal hygiene items and services in the preamble of the proposed rule. Commenters provided many suggestions

for additions or deletions to the illustrative list and called for greater specificity. Commenters expressed concern or uncertainty about the required variety or amount of certain items and services, particularly hair cuts, nail care, special soaps, over the counter drugs, and incontinence supplies. Several commenters had suggestions for alternate lists. Some commenters believed that facilities should be allowed to charge for prescription or over the counter items. Several commenters expressed general satisfaction with the list.

Response: Because of the impossibility of developing a list that will remain complete for any length of time, we have continued to use the listed items and services as examples. We believe that all of the items and services specified in the list are routine personal hygiene items and services. However, we would like to clarify a few points. First, hair cuts refer to trims and simple cuts provided by facility staff. They do not include permanent waves, hair coloring, relaxing, or hair cuts performed by beauticians not employed by a facility. Similarly, nail care refers to routine trimming, cleaning, and filing, not polishing.

Several commenters were concerned that our list including haircuts, shampoo, and conditioner means that other hygiene or therapeutic products like ointments to control dandruff and itching would not be included. Similarly, some commenters were concerned that nail care, while excluding polishing, would not include care for ingrown or damaged nails. Other commenters on both issues expressed concern that specific items on the list could be construed to require the provision of luxury items or services at the demand of the residents. We again note that the listed items and services are merely examples of the types of items and services that are the subject of the requirements, and do not represent the universe of items and services that, when needed, must be provided without cost.

We also note that several comments concerning our listing of specific hair and nail care items and services reflected the individual commenter's personal view of a particular item or service as being either cosmetic in nature or truly essential to personal hygiene. This had led us to remove the terms that engendered the most value-laden comments (haircuts, shampoo, conditioner, and nail care) and replace them with "hair hygiene" and "nail hygiene", respectively. We use these new terms to redirect the focus from subjective perceptions about particular

items to an emphasis on the objective needs of the individual nursing home resident.

We note that payment is available under Medicare for foot care performed by a podiatrist under circumstances already delineated in our program instructions. We do not believe it is necessary to list items such as prescription soaps and shampoos because the provision of these items (which are not routine) can fall under other provisions of the law, for example, the Medicare drugs and biologicals benefit at section 1861(t) of the Act (which only covers drugs and biologicals not ordinarily furnished by a SNF) and the Medicaid prescription drug benefit at section 1905(a)(12) of the Act.

Comment: A few commenters were concerned about the quality and type of personal hygiene items and services required to be provided. Some commenters believed that there should be standards with regard to the quality, brand, or variety of items and services required to be provided. These commenters believed that some facilities would attempt to circumvent the prohibition on charging residents for personal hygiene items and services by providing low-quality or otherwise unappealing items or by providing insufficient variety, thereby compelling residents to purchase higher quality items and services. They wanted the list to specify that items must be comparable to those provided in the community, that certain brands must be provided, that facilities must provide items appropriate for each resident, or that residents must have a choice of several brands of each item. Other commenters believed that we were requiring facilities to provide each resident with the specific brands he or she desires or that residents could provide free items to family and friends. Some commenters wanted us to indicate that residents could purchase personal hygiene items if they wish.

Response: As we have indicated elsewhere in this preamble, the regulations already require that services provided by SNFs and NFs be of high quality and sufficient quantity to be effective. We believe it would be inappropriate for us to specify brands that must be provided for a variety of reasons, such as the unavailability of certain brands in certain areas and the impossibility of requiring a specific brand to meet the needs of every resident. Also, we recognize that purchasing a single brand in bulk can have a financial advantage, such as discounts. Although facilities are not required to provide residents with

specific requested brands of items, they must provide products which are sufficient to meet the needs of residents (for example, a skin condition or allergies might create the need for additional brands of soap.) However, facilities are not required to provide an unlimited variety of brands of these items and services. It is the required assessment of resident needs, not resident preferences, that will dictate the variety of products facilities need to provide. If a resident prefers and requests a certain brand of an item, a facility may charge the resident the difference between the cost of the brand the resident requests and the cost of the brand generally provided by the facility if the facility chooses to provide the requested brand. Facilities need not provide these items and services to nonresidents.

Comment: A few commenters asked that we clarify that facilities may not charge for personal hygiene items and services required by certain ethnic groups.

Response: Facilities must provide personal hygiene items and services to meet the needs of residents. If an individual is unable to use the product generally supplied by the facility (for example, if the usual product is too harsh or if the person is allergic to it), the facility must provide an appropriate substitute at no charge, regardless of the individual's ethnic origins. However, if, based on ethnic preferences, an individual is unwilling to use an otherwise acceptable item, the facility is not required to furnish the preferred type of the product at no charge.

Comment: We received a substantial response to our request for comments on whether personal laundry should be considered a personal hygiene service and therefore a service for which facilities may not charge residents. There were many commenters on both sides of the issue. Those commenters who believed that facilities should not be required to furnish personal laundry were primarily concerned that sufficient payment might not be provided; that family members (who may have visited the facility to bring clean clothing or to pay a laundry charge) would no longer have an incentive for regular visits; and that Medicaid residents might have a difficult time finding places in facilities if there was insufficient payment. One commenter asserted that personal laundry is not a part of basic personal hygiene. Those commenters who believed that residents should not be charged for personal laundry indicated that it would consume too large a portion of the monthly personal needs

allowance, that it is necessary for basic personal hygiene, and that individuals with no one to pay for their personal laundry have difficulty in finding a bed (in part because facilities have used laundry charges to supplement State Medicaid payments).

Commenters were also concerned about the range of services that constitute personal laundry. Many commenters indicated that personal laundry should not include specialty services such as alterations, mending, dry cleaning, cleaning of furs and leather, and hand washing. A few commenters indicated that personal laundry should include dry cleaning. A couple of commenters expressed concern about facility liability for clothing lost or damaged in commercial laundries. Some commenters said that requiring facilities to provide personal laundry services would infringe on residents' freedom of choice and asked that residents or families be allowed to choose to do laundry. Some commenters asked that States be allowed to determine how they will handle personal laundry.

Response: Clean clothing is essential for good personal hygiene and quality of life. We were especially concerned by commenters who indicated that profits from personal laundry were necessary to supplement the Medicaid per diem payment and by reports that Medicaid recipients are refused admission to facilities if they do not have a friend or relative to pay for their laundry. Section 447.15 states that providers must accept Medicaid payment as payment in full; this prohibits facilities from using funds from Medicaid residents or their families to "make up" for perceived deficiencies in payment.

We would like to clarify that basic personal laundry does not include dry cleaning, mending, hand washing, or other specialty services; these services need not be provided, and residents may be charged for such services if they request them. Therefore, we have modified the regulation to indicate that basic personal laundry is all that is required. Facilities are responsible for the quality of commercial laundry services to the same extent that they are responsible for the other services provided by outside suppliers to their residents (see § 483.75(j)). Residents are not required to accept the basic personal laundry services facilities must provide; residents are free to make other arrangements for their clothing if they desire. Since some states did not require personal laundry to be provided, and we believe it is appropriate to provide basic personal laundry services to all

residents, this regulation does not permit States to determine whether or not to include basic personal laundry in their rates.

Comment: A significant number of commenters expressed an opinion on whether residents could be charged for medical items such as eyeglasses and prescription drugs. A majority of commenters said that eyeglasses and prescription drugs should not be included in the per diem rate for several reasons. They believed that obtaining sufficient payment would be a problem, that residents might have difficulty in obtaining a bed in a facility if their medications or eyeglasses were too expensive, that costs vary too widely among residents, or that these items should be paid as ancillary services. One commenter believed that it is inappropriate to prohibit facilities from charging for medical care items as long as they are optional services under Medicaid. Several commenters believed facilities should not be allowed to charge medical items such as eyeglasses and prescription drugs to residents' funds or suggested other items that they believed should not be charged. One commenter believed that facilities should absorb certain prescription drug charges. Some commenters believed that residents should be charged for other medical items such as dentures or hearing aids or that such items should only be available without charge to the extent that they are covered under Medicare or Medicaid.

Response: Payment for many medical items such as eyeglasses, prescription drugs, dentures, and hearing aids is available under benefits other than the SNF and NF benefits. Therefore, we have not included such items among the items and services that are included in payment for the SNF and NF benefits under Medicare and Medicaid. We discussed the reasons for this approach earlier in the preamble. However, we note that section 1819(b)(4) of the Act requires SNFs to provide pharmaceutical services either directly or under arrangements and section 1919(b)(4) of the Act requires NFs to provide pharmaceutical services either directly or under agreements. Prescription drugs are part of pharmaceutical services.

Comment: One commenter asked whether this requirement prohibits facilities from charging private pay residents for personal hygiene items and services.

Response: As indicated in the NPRM, the purpose of these regulations is to delineate items and services included in payment from Medicare and Medicaid.

Therefore, facilities may charge private pay residents for personal hygiene items and services.

Section 483.10(c)(8)(ii)—Optional Covered Items and Services

Comment: Many commenters objected to the proposed provision permitting facilities to choose to provide residents with supplies, equipment, and transportation essential to the activities program for a variety of reasons. A few commenters requested clarification on the proposed provision. Some commenters supported the provision or requested expansion to include areas other than the activities program.

Response: This provision was intended to illustrate the principle that facilities may not charge for any portion of the required activities program. On reconsideration of the provision, we believe that it might be misconstrued as permitting facilities to choose not to offer a component of a required service. Section 483.15(f) requires facilities to furnish an activities program, and they must furnish all services necessary to comply with this requirement. We have decided that a more effective way to prevent facilities from charging for any portion of the activities program is to clarify that the activities program for which facilities may not charge residents is the activities program required by § 483.15(f). We have made this change in the regulations and have deleted the proposed provision.

Section 483.10(c)(8)(iii) Items and Services That May Be Charged to Residents' Funds

Comment: One commenter believed that facilities should only be allowed to charge residents' funds for the personal needs of residents. This comment was based on the premise that the personal needs allowance for Medicaid recipients is to be used only for personal needs such as clothing.

Response: While the personal needs allowance was designed to allow residents to continue to meet their personal needs, we do not believe that it is appropriate under current law to restrict residents' discretion to purchase any items and services they desire with their personal needs allowance or other portion of their personal funds.

Comment: A few commenters were disturbed that items and services that may or may not be covered under Medicare or Medicaid were included in the list of items and services for which facilities may charge residents.

Response: We recognize that some of the items and services listed in § 483.10(c)(8)(iii) may be covered under Medicare or Medicaid, either under

certain circumstances or in certain amounts. However, to the extent that these items and services are not covered, facilities may charge residents for them. For example, some individuals or families engage private nurses or aides to provide one-on-one services to some residents. We note that § 483.10(c)(8) prohibits facilities from charging residents for items and services for which payment may be made under Medicare or Medicaid.

Comment: A number of commenters requested that many of the proposed items and services for which residents may be charged should be clarified to indicate that charges may be made only for items and services for individual, personal use.

Response: Because facilities may only charge residents for requested items and services, we do not believe it is necessary to specify that items and services for which facilities may charge residents are for individual, personal use.

Comment: Various commenters asked that we permit facilities to charge residents for the following items and services: dental services, all items and services not covered by Medicare or Medicaid, barber/beautician services, devices used for resident safety, dry cleaning, bedhold days beyond the number of days covered, items prescribed by a personal physician that are not covered by Medicare or Medicaid, noncovered items that are required by a State regulator, noncovered items required for State payment, noncovered items that are necessary as an admission set up, and items and services which may be covered under the Medicaid programs but are more expensive or extensive or are of a different brand or type than those provided through the Medicaid program.

Response: Facilities may not charge residents for the use of the equipment routinely used in their care because such devices are covered items. All items and services that are required by a State regulator or are required for State payment are covered. Facilities are permitted to charge residents for any items and services that are not covered by Medicare or Medicaid as long as they are requested by a resident and the resident is informed that he or she must pay for the items and services. Facilities may not charge for noncovered items that are necessary for admission because facilities are prohibited from requiring residents to purchase items or services as a condition of admission. Items and services that are more expensive or extensive than those covered (including bedhold days in

excess of those covered under the State plan) under the Medicaid program may be charged to residents' funds, provided that this practice is not prohibited by the State. We have discussed dental services, barber/beautician services, and dry cleaning earlier in this preamble. We would note that the residents' rights provisions at § 483.10(b)(5) and (6) require full disclosure to the residents as to their potential liability for charges.

Comment: A few commenters asked that we require that services and supplies for Medicaid residents should not be of an inferior quality to those provided to private paying residents.

Response: We have not made this clarification because there are already protections to ensure that items and services for Medicaid residents are of the same quality as available to other residents (see § 483.12(c)).

Comment: One commenter asked that the list of items and services for which facilities may charge residents be removed and replaced with a general category. A few commenters believed that facilities should be permitted to charge for any services that are not covered by Medicare or Medicaid.

Response: We note that some commenters expressed general agreement with this section. Sections 1819(f)(7) and 1919(f)(7) of the Act require the Secretary to promulgate regulations defining which items and services are covered under Medicare and Medicaid and which items facilities may charge residents. This list fulfills the requirements of these sections of the law, which clearly contemplate that the list will be in regulations. Facilities may charge residents for any item or service not covered under Medicare or Medicaid as long as it is requested with the knowledge that a charge will be made for it.

Comment: A few commenters believe that we should change this section so that it indicates that residents may choose to purchase items and services rather than indicating that facilities may charge residents' personal funds for requested items and services.

Response: We have retained the language in the NPRM because we believe that it reflects current practice. Facilities frequently manage the funds of residents, and they charge authorized purchases directly to a resident's personal account. As we noted earlier, the regulations governing NFs at § 483.10(b)(5) and (6) require full disclosure to residents of all potential charges.

Comment: A commenter suggested that we prohibit mark-ups on items and

services for which residents may be charged because of a belief that facilities might use the profits to supplement Medicaid payment for covered services.

Response: For those items and services requested by residents that are more expensive than or in excess of covered services, facilities may charge the difference between the covered item or service and their customary charge for the requested item or service. Facilities may charge as they see fit for other noncovered items and services. We understand that the commenter is concerned that residents are not indirectly charged for covered items and services. However, profiting on sales of noncovered items and services is not illegal. Of course, if a facility demands additional payment for items and services covered under Medicaid, then it is in violation of the requirements at § 447.15.

Section 483.10(c)(8)(iii)(A)—Telephone

Comment: One commenter requested Federal action on charges the telephone company makes when there is a room charge.

Response: The Health Care Financing Administration has no authority to regulate telephone companies. We note that telephones are among the items and services for which residents are liable.

Section 483.10(c)(8)(iii)(B)—Television

Comment: One commenter asked that facilities are allowed to charge for cable hook-up. One commenter asked that we prohibit facilities from charging for the electricity to operate televisions and radios.

Response: We do not believe it is inappropriate for a facility to charge to hook up a resident's television to cable. Facilities may not charge for electricity because costs for electricity are considered costs related to the physical operation of a facility, which are covered under Medicare and Medicaid.

Section 483.10(c)(8)(iii)(C)—Personal Comfort Items

Comment: A few commenters asked that we define or clarify notions, novelties, and confections.

Response: Notions and novelties are small items that are useful to or having meaning for a resident. Confections are candies and other sweet delicacies. We believe these terms have common meanings which are not necessary to reflect in the regulations.

Section 483.10(c)(8)(iii)(D)—Cosmetic and Grooming Items and Services

Comment: Several commenters are concerned that this provision could have

an adverse impact on the quality, quantity, or variety of personal hygiene items and services facilities are required to provide by § 483.10(c)(8)(i)(E). A few commenters asked that we clarify this provision. A few commenters asked that we indicate that these are cosmetic or grooming items and services for which no payment is made under Medicare or Medicaid. Some commenters believed that we should prohibit facilities from charging for special products used by certain ethnic groups. A commenter asked that we state specifically that services that are generally provided in a beauty or barber shop are included in services that may be charged to residents' funds. One commenter asked whether facilities may charge for special nail clippers.

Response: As we indicated in the NPRM, facilities may only charge for cosmetic and grooming items and services of types or costs in excess of those which are required to be provided and for which payment is made under Medicare or Medicaid. Because facilities are required to provide sufficient quantities of personal hygiene items and services to meet the needs of residents, this provision does not have any impact on the items and services provided under § 483.10(c)(8)(i)(E). Facilities are prohibited from charging for products used by ethnic groups to the extent that these items are covered by Medicare and Medicaid. As we indicated in the discussion on § 483.10(c)(8)(i)(E), routine nail and hair care, such as hair cuts performed by facility staff; shampoos; and nail trimming, cleaning, and filing may not be charged to residents' funds. However, services such as permanent waves and nail polishing are not covered and are included in cosmetic and grooming services for which residents may be charged. Facilities are not permitted to charge residents for equipment necessary to perform a service for which payment is made under Medicare or Medicaid. Therefore, facilities may not charge for special nail clippers unless a resident wants a personal clipper.

Section 483.10(c)(8)(iii)(G)—Gifts

Comment: A few commenters requested that we clarify that residents may be charged for gifts purchased for others. The commenters also were concerned that residents might be charged for items purchased for themselves.

Response: Facilities may charge residents for items and services purchased from the facility for themselves or as gifts for others. However, if residents purchase or receive items from outside sources and

use the items themselves or as gifts for others, the facility, not having supplied the items, may not charge for them.

Section 483.10(c)(8)(iii)(I)—Social Events

Comment: A few commenters requested clarification on exactly what conditions social events and entertainment must meet for facilities to charge residents for them as well as clarification as to the scope of activities programs. Some commenters believed that facilities should not be offering entertainment or social events that are outside the scope of the activities program or that are available only for a fee. A few commenters were concerned that this provision would limit resident access to the community. One commenter indicated that facilities should be prohibited from charging for events that are free to the public. A few commenters asked that this category be expanded to include educational events, programs that are offered on facility premises by outside organizations, or those excursions and activities that they are unable to subsidize.

Response: As indicated in § 483.15(f), the activities program must meet the interests and the physical, mental, and psychosocial well-being of each resident. Facilities are prohibited from charging for this program. However, we believe that certain social events and entertainments can be outside the scope of the activities program. For example, a local service organization may well arrange a day trip for elderly individuals, and a NF may publicize this event and assist residents in signing up for it. Also, we agree with commenters that some events offered on facility premises (for example, educational events or other events offered by outside entities) could fall outside the scope of the required activities program. (This change has been made to the regulations.) We have not prohibited facilities from charging or allowing others to charge for entertainment and social events that are outside the scope of the activities program because we believe that such a prohibition could deny residents access to group rates and other benefits. This provision should not be construed to allow facilities to charge residents for off-site excursions that are part of the activities program or for any other parts of the activities program. We have not prohibited facilities from charging residents in connection with events that are free to the public because facilities may incur expenses for transportation, escorts, and other related costs. Facilities may charge for such costs.

Section 483.10(c)(8)(iii)(J)—Noncovered Special Care Services

Comment: Several commenters indicated that private duty nurses are sometimes covered and that the regulations should not indicate that facilities may charge for them. One commenter indicated that residents could be charged for sitters but not private duty nurses. One commenter indicated that this section should contain only specifically identified, noncovered, nonmedical, nonremedial services for which Medicaid never pays and asked for examples of other noncovered special care services.

Response: When we proposed to permit charges for private duty nurses we intended to refer to nurses who are employed by a resident (or family member or friend) to provide care to him or her. The services provided by these individuals are not covered. Likewise, the services of sitters (private duty nurse aides) are not covered. We have changed the term "private duty nurses" to "privately hired nurses and aides" for greater clarity. We have not identified all services that could fit in this category because we believe that they could vary over time and among the States. Another example of noncovered special care services is experimental services (for example, experimental therapies or experimental drugs).

Section 483.10(c)(8)(iii)(K)—Private Room

Comment: A few commenters indicated that some States do not allow facilities to charge for private rooms. One commenter indicated that permitting charges for private rooms would create a 2-tier system of care. One commenter indicated that private rooms are sometimes covered.

Response: We agree that private rooms are sometimes covered and acknowledge that States may prohibit facilities from charging for them under Medicaid. However, where private rooms are not covered and where the law allows charges to be made for them, facilities may charge residents for them.

Section 483.10(c)(8)(iii)(L)—Specially Prepared Food

Comment: Many commenters were distressed by this provision because they believed that it would relieve facilities from providing sufficient quality, quantity, variety, and types of food. A few commenters indicated that residents should be able to have specially prepared or alternate food at no extra charge. A commenter requested that we define this provision with greater specificity. Several commenters

requested clarification on whether facilities may charge for special diets and special food supplements; many of these commenters believed that there should be no charge for such diets and supplements. One commenter asked that facilities also be allowed to charge for special beverages. A few commenters were concerned that residents would be charged for special foods required for religious reasons.

Response: This regulation does not relieve facilities of their responsibility to meet the dietary needs of their residents, including special diets, food supplements, and substitutes for residents who refuse to eat the food that is offered. Instead, this regulation allows for resident purchases of specialty foods from facilities. Special beverages are included in the category of special foods, and facilities may charge for them. As indicated by the proposed rule, we believe it is reasonable to permit facilities to charge a resident for requested specially prepared or alternate food if the requested food is more expensive than the food required to be prepared by the facility in accordance with § 483.35, which states, in part, that facilities must provide food that is palatable and nutritious. Facilities must also provide food that meets individual needs and must offer substitutes to residents who refuse food offered. (For example, if a facility offers spaghetti for lunch and a resident refuses the spaghetti, the facility must offer a substitute of similar nutritive value.) We recognize that some residents will have specific food preferences based on personal, religious, cultural, or ethnic differences. If a resident refuses the prepared food as well as the substitutes of similar nutritive value because of personal, religious, cultural, or ethnic preferences, the facility is not required to furnish the specialty food at no charge. Residents may wish to consider discussing their preferences with the facility before admission because it may not be possible for the facility to provide the preferred food. Like other items more expensive than or in excess of covered items, residents may be charged only for specially prepared food if they are informed that there will be a charge, and the charge may be only the difference in price between the requested item and the covered item.

Comment: A few commenters expressed concern about bookkeeping and administrative difficulties this provision could cause. One commenter asked several questions on which individuals in a facility should perform tasks relating to this provision.

Response: First, we have not required facilities to serve specially prepared food, we have only permitted them to charge for it if they do so. We have not specified which staff members would be responsible for performing administrative tasks relating to this provision because we do not wish to limit facility flexibility. To reduce administrative burden on facilities, we have deleted the requirement that facilities document when the requested food provided is more expensive than the food provided to other residents.

Section 483.10(c)(8)(iv)—Requests for Items and Services

Comment: A number of commenters were concerned that we proposed to prohibit facilities from charging a resident for any item or service not requested by him or her. A large number of commenters believed that facilities should be permitted to charge for noncovered items or services not requested by a resident but ordered by a physician. A few commenters had suggestions on the payment methodology for items and services ordered by a physician but not requested by a resident. Some commenters were concerned that this provision would harm incompetent residents, who might not be able to request items and services. A few commenters asked whether facilities could charge residents for items and services requested by family members, legal guardians, and individuals with financial responsibility for the resident. One commenter believed that facilities should be allowed to charge residents for anything essential to provide the highest quality of care. One commenter believed that accepting an item or service should be considered the same as requesting it. A few commenters believed that facilities should be allowed to purchase needed items for residents. A few commenters believed that residents should be permitted to refuse noncovered items ordered by a physician. One commenter believed that facilities would have to absorb many costs resulting from having to provide items and services not specifically required by a resident.

Response: We have continued to prohibit facilities from charging residents for items and services that they do not request, regardless of whether the item or service is ordered by a physician. If a resident is incompetent, then the person or persons authorized under State law to exercise his or her rights is permitted to request items and services on the resident's behalf. If a resident is not incompetent,

then the facility may not charge him or her for items and services requested by family. (However, families may purchase noncovered items and services from a facility.) We have not permitted facilities to charge for nonrequested items and services ordered by a physician or deemed necessary by a facility because § 483.10(b)(4) permits residents to refuse treatment. Because we have not required facilities to provide any noncovered items and services, we do not believe that facilities will absorb significant amounts related to items and services not specifically requested by a resident.

Comment: A few commenters believed that facilities should be allowed to require residents to purchase certain items or services as a condition of admission or continued stay in the facility, for example, membership in an ambulance service, items or services required by Federal or State law, or items or services the facility really feels the resident needs. One commenter believed that facilities should be allowed to require residents to bring their own clothing and personal hygiene items to the facility.

Response: We have continued to prohibit facilities from requiring residents to purchase items and services as a condition of admission or continued stay. Residents are permitted to determine which items and services they need and will accept. It is unclear which items and services required by State or Federal law are not covered by Medicare or Medicaid. We have not required residents to bring their own clothing to a facility because we believe that they will bring their clothing regardless of whether we require them to do so. We have not required facilities to supply personal clothing. We have not required residents to bring their own personal hygiene items to a facility, but we believe that some residents will do so even though facilities are required to provide personal hygiene items.

Comment: A few commenters believed that we should require documentation recording that the facility informed the resident that there would be a charge for an item, that the resident requested the item, and that the resident received the item. One commenter believed residents should be informed at the time of admission what items and services are covered by Medicaid and items and services for which they are expected to pay. One commenter believed that facilities should inform a resident that an item or service is not covered each time the resident asks for a noncovered item or service. A few commenters were

concerned that it would be too difficult to implement this provision. One commenter indicated that facilities do not know how much items and services cost before they are ordered and that it would therefore be difficult for facilities to tell residents how much things will cost when they request things. Another commenter said that it would be too difficult for staff to remember which residents have which payment sources and what items are covered under each payment source. One commenter asked that this provision be modified to allow for charge information only during business hours.

Response: Facilities are required by § 483.10(b) (5) and (6) to provide at the time of admission and periodically during the resident's stay in the facility a list of (1) services available, (2) services covered under Medicare or Medicaid, and (3) charges for services not covered. Because residents are periodically informed in writing of services for which they may be charged and how much charges will be, we have not required facilities to document each incident of informing a resident that there will be a charge for a service. (If facilities wish to maintain documentation for their own records, we encourage them to do so.) However, we believe that it is important for residents to be reminded that there will be a charge for a service every time such a service is requested. We believe that it is necessary for facilities to tell residents how much a requested service will cost; however, we do not believe that facilities must allow residents to purchase items and services at all hours.

Section 483.420(b)—Client Finances

Comment: A few commenters believed that the content of the NPRM was inappropriate for ICFs/MR. Some commenters had specific suggestions for making the content of the NPRM more relevant to ICFs/MR.

Response: After reconsideration of the statute, we have deleted the proposed provision that would apply these SNF and NF requirements to ICFs/MR. Section 1919(f)(7) of the Act requires the Secretary to issue regulations defining those costs that may be charged to the personal funds of NF residents and those costs that are included in payment to NFs. Public Law 100-203 changed the terms "SNFs" and "ICFs" to "NFs". Section 4214(c)(A) of OBRA '87 stated that references to NFs constitute references to SNFs and ICFs, but not ICFs/MR. Therefore, the Secretary is not required to issue regulations relating to ICF/MR clients.

IV. Provisions of this Final Rule

The provisions of this final rule restate the provisions of the March 20, 1990 proposed rule with these exceptions:

- In § 483.10(c)(8), we have added clarifying language stating that, although a facility may charge the resident for requested services that are more expensive than or in excess of covered services, this does not affect the prohibition on facility charges for items and services for which Medicaid has paid.

- In § 483.10(c)(8)(i)(A), we are changing "nursing and specialized rehabilitative services" by deleting the words "and specialized rehabilitative services" because payment for many therapies that can be considered to be specialized rehabilitative services can currently be obtained through benefits other than the SNF and NF benefits. As stated in the "Discussion of Comments" section above, we emphasize that sections 1819(b)(4) and 1919(b)(4) of the Act require facilities to provide specialized rehabilitative services. Removing specialized rehabilitative services from the list of items and services that are included in payment from Medicare and Medicaid does not relieve facilities from their responsibility under sections 1819(b)(4) and 1919(b)(4) of the Act to provide these services directly or arrange for them. Examples of specialized rehabilitative services are physical therapy, speech language pathology, and occupational therapy. We also are adding the words "as required in § 483.30" for clarification. Section 483.30 sets forth the nursing services requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program and as a NF in the Medicaid program.

- In § 483.10(c)(8)(i)(B), we are adding the words "as required in § 483.35" to "dietary services" for clarification. Section 483.35 sets forth the dietary services requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program and as a NF in the Medicaid program.

- In § 483.10(c)(8)(i)(C), we are adding the words "as required in § 483.15(f)" to "activities program" for clarification. Section 483.15(f) sets forth the activities requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program and as a NF in the Medicaid program.

- In § 483.10(c)(8)(i)(E), we are expanding upon the term "routine personal hygiene items and services" by

including a list of examples to provide guidance as to what constitutes personal hygiene items and services because we have concluded that the law specifically requires the list to be in the text of the regulations. As stated in the "Discussion of Comments" section above, we recognize that the list may not be complete. Accordingly, we have indicated that personal hygiene items and services include but are not limited to the items and services in the list. We believe that sufficient latitude is given to include additional items and services that may be included in this category.

The list includes the following items and services when needed by residents:

- Hair hygiene supplies.
- Comb.
- Brush.
- Bath soap
- Disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection.
- Razors.
- Shaving cream.
- Toothbrush.
- Toothpaste.
- Denture adhesive.
- Denture cleaner.
- Dental floss.
- Moisturizing lotion.
- Tissues.
- Cotton balls.
- Cotton swabs.
- Deodorant.
- Incontinence supplies.
- Sanitary napkins and related supplies.
- Towels.
- Washcloths.
- Hospital gowns.
- Over the counter drugs.
- Hair and nail hygiene services.
- Bathing.
- Basic personal laundry.
- Incontinence care.

• We are adding a § 483.10(c)(8)(i)(F): "Medically-related social services as required in § 483.15(g)". As we have stated in the "Discussion of Comments" section above, we do not believe that it is possible to create an exhaustive list of items and services that are included in Medicare and Medicaid payments to SNFs and NFs, and we believe that the best alternative is to list general categories of items and services that are included. We have therefore added "medically-related social services" to the list of items and services to § 483.10(c)(8)(i).

• We are deleting paragraph (ii) of the proposed § 483.10(c)(8) in this final rule. The proposed § 483.10(c)(8)(ii) stated that a facility may choose to provide residents with supplies, equipment, and transportation essential to the activities program required by § 483.15(f), which describes the activities program a facility must provide for its residents in order to meet the Level B requirement

for quality of life. The proposed § 483.10(c)(8)(ii) stated that, if a facility chooses to provide these items and services, they would be included as covered Medicare or Medicaid services and paid under those program benefits, and that no charges may be made to residents for those services.

The purpose of this provision was to illustrate the principle that facilities may not charge for any portion of the required activities program. To the extent that they are part of the required activities program, supplies, equipment, and transportation are included in payment from Medicare and Medicaid. Because of numerous comments indicating confusion about this provision, we have deleted it.

• We are revising the proposed § 483.10(c)(8)(iii)(I) to permit facilities to charge for all entertainment and social events outside of the required activities program. The proposed paragraph (I) permitted facilities to charge only for entertainment and social events offered both outside the activities program and off the premises. This change is necessary to clarify that facilities cannot charge for entertainment and social events offered within the scope of the prescribed activities program, regardless of whether the activity is offered on or off the facility's premises.

• We are revising paragraph (J) of the proposed § 483.10(c)(8)(iii), which included "Noncovered special care services such as private duty nurses" among items and services that may be charged to residents' funds. As stated in the "Discussion of Comments" section above, this change is necessary for clarification. When we proposed to permit charges for private duty nurses we intended to refer to nurses who are employed by a resident (or family member or friend) to provide care to him or her. The services provided by these individuals are not covered. Likewise, the services of sitters (private duty nurse aides) are not covered. We have changed the term "private duty nurses" to "privately hired nurses and aides" for greater clarity. We have not identified all services that could fit in this category because we believe that they could vary over time and among the States.

• We are revising the proposed § 483.10(c)(8)(iii)(L) to remove the requirement that facilities document that specialty food costs more than the food required to be provided by the facility before charging a resident for the specialty food. This change is necessary to reduce administrative burden on facilities.

• We proposed to add a new paragraph (b)(1)(iii) to § 483.420, which sets forth the conditions of participation

for ICFs/MR. It would have required ICFs/MR to establish and maintain systems that complied with the provisions of § 483.10(c)(8) with respect to items or services that may be charged to residents' funds. As stated in the "Discussion of Comments" section above, we have decided to delete this proposed provision. Section 1919(f)(7) of the Act requires the Secretary to issue regulations defining those costs that may be charged to the personal funds of NF residents and those costs that are included in payment to NFs. Public Law 100-203 changed the terms "SNFs" and "ICFs" to "NFs". Section 4214(c)(A) of Public Law 100-203 indicated that references to NFs constitute references to SNFs and ICFs, but not ICFs/MR. Therefore, the Secretary is not required to issue regulations relating to ICF/MR clients.

• Because we are deleting the proposed § 483.10(c)(8)(ii), the numbering within § 483.10(c)(8) changes accordingly, that is, the proposed § 483.10(c)(8)(iii) becomes the final § 483.10(c)(8)(ii), and the proposed § 483.10(c)(8)(iv) becomes the final § 483.10(c)(8)(iii).

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria of a "major rule" that is, one that will be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers; individual industries; Federal, State, local agencies; or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all SNFs and NFs to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final

rule that will have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural hospital impact analysis because we have determined, and the Secretary certifies that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

We do not believe that this rule will create costs of \$100 million or more annually or that it will significantly affect a substantial number of nursing homes. However, because of commenters' concerns over costs, we have prepared the following analysis. In combination with other discussion in the preamble, it constitutes a combined Regulatory Analysis and Regulatory Flexibility Analysis.

B. Discussion

This final rule will primarily conform regulations to the legislative provisions of sections 1819(f)(7) (for Medicare) and 1919(f)(7) (for Medicaid) of the Act and section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977. The provisions of this final rule set forth those items and services that may not be charged to residents' funds because they are included in payment from the Medicare or Medicaid programs and those items and services for which residents may be charged.

The majority of comments received concerning the impact statement published in the proposed rule (March 21, 1990 at 55 FR 10256) suggested that these provisions will result in costs which exceed \$100 million, and commenters therefore believed this to be a major rule. A few commenters provided various estimates on cost increases they believed would result from this rule. For example, an association of facilities estimated that requiring over the counter drugs to be included in Medicaid payment to NFs would result in an estimated additional \$11.9 million in costs to State Medicaid programs. The same association estimated that requiring personal laundry to be included in the Medicaid rate would affect 10 States and would result in an additional \$42.3 million in costs to Medicaid programs. (We have learned that at least one key State that the association included in its

assessment added personal laundry to its rate in 1991.) Some commenters also believed that incontinence supplies would be a major cost factor, but no useable cost estimates were supplied.

Other cost estimates that commenters thought will increase program expenditures were based on erroneous interpretations of the statute. (The estimate of costs associated with over the counter drugs, for example, assumed that these drugs are not now required to be provided. This is not the case. Pharmaceutical services are required services under sections 1819(b)(4)(A)(iii) and 1919(b)(4)(A)(iii) of the Act.) In the other cases, we have not been able to verify the cost estimates commenters supplied. However, because of the commenters' strong concerns and the magnitude of their estimates, we have prepared this combined Regulatory Analysis and Regulatory Flexibility Analysis.

In general, OBRA '87 caused States to expand the range of items and services included in their Medicaid rates. Thus, to a major degree, the impact of the rule has largely already occurred. Some States, however, still do not include in their payment rates to NFs all of the items and services that this final rule requires to be included in payment to NFs under the Medicaid program. These States will be directly affected by this final rule. We have no data that will allow us to accurately estimate either the additional payments States will be obligated to pay to NFs or the amount of savings that recipients or beneficiaries will realize by their not being charged for some items and services.

We expect that facilities may also be subject to an impact as a result of these requirements, but we do not believe the impact will be significant in the long term. We have purposely set the effective date of these regulations at October 1, 1992, on which date States must reevaluate their NF payment amounts. This rule specifically requires that payments be made to facilities for the items and services in question. Thus, States must receive their rates to cover costs.

A clearer statement of the items and services included in payment from Medicare and Medicaid will benefit facility administrators because this final rule will give them a consistent baseline statement from which to evaluate their choices. It will also benefit Medicare beneficiaries and Medicaid recipients, who will have a clearer understanding of facility responsibility. Beneficiaries and recipients should not be inappropriately charged for items and

services for which payment is made by Medicare and Medicaid.

In general, we believe that the benefits of this rule will outweigh the costs. As we have noted above, we believe that a significant amount of the additional program requirements as a result of the statute on which this regulation is based have already been placed in effect during fiscal years 1990 and 1991. Finally, we note that this rule is required by law, and States and facilities must comply with it.

Some commenters stated that these provisions will result in a significant impact on SNFs and NFs. As stated earlier in this impact analysis, we do not believe that these regulations will have a significant long-term impact on facilities. Because any cost increase is likely to be less than \$100 million, and reimbursed through rate changes, and because total Federal/State reimbursement to NFs alone is about \$25 billion annually, it does not appear that there could be a significant impact on a substantial number of nursing facilities.

VI. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). However, sections 4204(b) and 4214(d) of Public Law 100-203 provide for a waiver of this requirement.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR part 483 is amended as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Sec. 1102, 1819(a)–(f), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a), (c), and (d), and 1919(a)–(f) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3)(a)–(f), 1395x (j) and (l), 1395hh, 1395z, 1396(a)(28), and 1396d (c) and (d), and 1396(a)–(f), unless otherwise noted.

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.10, paragraph (c)(8) is revised to read as follows:

§ 483.10 Level A requirement: Resident rights.**(c) Protection of resident funds.**

(8) *Limitation on charges to personal funds.* The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See § 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

(i) *Services included in Medicare or Medicaid payment.* During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

(A) Nursing services as required at § 483.30 of this subpart.

(B) Dietary services as required at § 483.35 of this subpart.

(C) An activities program as required at § 483.15(f) of this subpart.

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.

(F) Medically-related social services as required at § 483.15(g) of this subpart.

(ii) *Items and services that may be charged to residents' funds.* Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A) Telephone.

(B) Television/radio for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Social events and entertainment offered outside the scope of the activities program, provided under § 483.15(f) of this subpart.

(J) Noncovered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by § 483.35 of this subpart.

(iii) Requests for items and services.

(A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.

(B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.

(C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and No. 93.714, Medical Assistance Program)

Editorial Note: This document was received by the Office of the Federal Register on November 5, 1992.

Dated: July 22, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: July 23, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-27292 Filed 11-10-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Public Land Order #6952**

[OR-943-4210-06; GP2-307; OR-48056(WASH)]

Withdrawal of National Forest System Lands for the Peony, Pole Pick, and Frank Burge Seed Orchards; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 110.00 acres of National Forest System lands in the Okanogan National Forest from mining for a period of 20 years for protection of three Forest Service seed orchards. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch 2 (1988)), but not from leasing under the mineral leasing laws, to protect three Forest Service seed orchards:

Frank Burge Seed Orchard

T. 35 N., R. 20 E.,

Sec. 12, S½SE¼NW¼, N½NE¼SW¼, and N½S½NE¼SW¼.

Pole Pick Seed Orchard

T. 33 N., R. 23 E.,

Sec. 23, E½NE¼SE¼ and E½W½N E¼SE¼.

Peony Seed Orchard

T. 36 N., R. 29 E.,

Sec. 20, E½E½NE¼SE¼;
Sec. 21, W½NW¼SW¼.

The areas described aggregate 110.00 acres in Okanogan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review

conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: November 2, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-27296 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87-268; FCC 92-438]

Broadcast Services; Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making (Third Report/Third Notice) is another step in the Commission's effort to bring Advanced Television (ATV) service to the American public. The proposed rules contained in the Third Report/Third Notice are discussed elsewhere in this issue. The final rule segment of the Third Report/Third Notice, which is dealt with here, responds to several petitions for reconsideration and/or clarification, as well as comments and reply comments filed in response to the Second Report and Other/Further Notice of Proposed Rule Making (Order/FNPRM) issued earlier in this Docket (57 FR 21744 and 21755, May 22, 1992), and takes a number of actions and makes several preliminary decisions all intended to facilitate implementation of ATV service in this country.

EFFECTIVE DATE: Notice of the specific effective date of the ATV rules will be announced in the *Federal Register* when the rules are published.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division (202) 632-7792; Gordon Godfrey, Mass Media Bureau, Policy and Rules Division (202) 632-9660; or Alan Stillwell, Office of Engineering and Technology (202) 653-8162.

SUPPLEMENTARY INFORMATION: This is a synopsis of the final rule portion of the Commission's Third Report/Third Notice in MM Docket No. 87-268, FCC 92-438, adopted September 17, 1992, released October 16, 1992. The complete text of this docket is available for

inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1990 M Street NW., room 640, Washington, DC 20554.

Synopsis of the Memorandum Opinion and Order/Third Report and Order

1. In this Third Report/Third Notice, the Commission responds to six petitions for reconsideration and/or clarification of the Order/FNPRM cited above, takes a number of actions, and makes several preliminary decisions regarding the implementation of ATV in this country. ATV refers to any television technology that provides improved audio and video quality or enhances the current television broadcast system known as NTSC. The generic term "ATV" includes High Definition Television (HDTV) systems. HDTV systems aim to offer approximately twice the vertical and horizontal resolution of NTSC receivers and to provide picture quality approaching that of 35 mm film and audio quality equal to that of compact discs. The Commission has previously decided that an ATV system that transmits the increased information of an ATV signal in a separate 6 MHz channel independent from an existing NTSC channel will allow for ATV introduction in the most non-disruptive and efficient manner. (First Report and Order, 55 FR 39275, September 26, 1990.)

2. This proceeding was initiated by Notice of Inquiry in July 1987 (52 FR 34259, September 10, 1987), and in September 1987 the Commission established the Advisory Committee on Advanced Television Service (Advisory Committee) to offer advice on the technical and public policy issues concerning ATV.

3. In addition to the comments and reply comments filed in response to the Second Report/Further Notice, the Commission received six petitions for reconsideration and/or clarification. These petitions were filed by: (1) America's Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, filing jointly (Public Television), (2) the Association for Maximum Service Television, Inc. (MSTV), (3) Diversified Communications, Maine Radio and Television Co., and Guy Gannett Publishing Co., filing jointly (Diversified), (4) the National Association of Broadcasters (NAB), (5) National Capital Communications, Inc. (NCCI), and (6) Polar Broadcasting, Inc., et al. (Polar).

4. The Commission now provides further detail on the major actions taken in this proceeding. First, the Commission reiterates its previous decision to restrict initial eligibility to existing broadcasters. After initial ATV assignments are made, the remaining ATV set-aside channels will be assigned to parties who apply after October 24, 1991, for NTSC facilities, and who are authorized to construct in the interim period before initial assignments are made. This group includes (1) parties ultimately awarded a construction permit based on an allotment petition pending as of the date October 24, 1991, regardless of whether or not the permittee had filed the original allotment petition; (2) parties awarded waivers of the current freeze on television broadcast applications in major markets and who are subsequently awarded an NTSC authorization; and (3) any other parties authorized to construct NTSC facilities in the interim period after October 24, 1991. The Commission defers a decision on the manner by which these parties will be authorized to apply for ATV channels until a decision has been reached on the assignment methodology applicable to the class of initially eligible broadcasters. With the exception of the preference given parties who apply for and are awarded NTSC facilities after October 24, 1991, once the initial eligibility period has passed, the application process will be open to all interested, qualified parties.

5. The Commission elects to rank initially eligible parties in the event of spectrum shortfall in the following order: (1) Licensees and permittees with program test authority as of the date ATV applications are accepted; (2) other permittees; (3) parties with applications for a construction permit pending as of October 24, 1991. The Commission declines to afford specific types of full-service broadcasters, such as operating public television stations, priority over others in obtaining a second 6 MHz channel, and it declines to rank initially eligible parties on the basis of a stricter financial showing, as one party suggests. Use of the Commission's existing financial criteria, together with ranking on the basis of level of construction and operation, strikes a balance between the need for financial resources and the need for broadcast experience in an operational facility which best serves the public interest. However, the Commission leaves open the possibility of using financial requirements to distinguish between those applicants in the first priority group listed in this paragraph, in the case of insufficient

spectrum to accommodate even that group. The Commission defers this question until it decides on an allotment and assignment methodology.

6. The Commission tentatively agrees with NCCI that a party challenging the renewal of an NTSC license should be permitted to file a supplemental application for the ATV channel which would be contingent upon the grant of the challenger's NTSC application. The Commission also tentatively agrees that the contingent ATV application should not be subject to a second comparative hearing. However, if a renewal challenger's NTSC application fails, its contingent application would also fail. As stated previously, the Commission does not intend to issue authorizations for new NTSC channels after initial assignments are made. The Commission does propose, however, to issue new NTSC authorizations for a party successfully challenging the renewal of an incumbent NTSC broadcaster, and succeeding to substantially the same broadcast facility. The Commission also makes several other proposals and seeks comment on various issues relating to the topic of renewal challenges and the ATV license. These matters are discussed in detail in the Notice portion of this decision which is summarized elsewhere in this issue.

7. The Commission temporarily suspends the dual network rule in certain circumstances until the time of full conversion to ATV. The dual network rule prohibits a network from simultaneously operating more than one network of television stations in identical or overlapping geographical areas. (47 CFR 73.658(g).) The Commission agrees with those commenters who believe that limited suspension of the dual network rule is a necessary step in the implementation of ATV, because it would facilitate network involvement in ATV's development and help hasten ATV implementation. The Commission will, however, require that any second feed transmitted by a network in a given community be destined for a station broadcasting in the ATV mode. Networks will also be permitted to send an ATV feed to a different licensee in the same community, where an NTSC affiliate fails to apply for and/or construct an ATV facility within the required time. If conditions change as ATV implementation progresses, the Commission can make appropriate adjustments to its policy at the time of the periodic reviews.

8. In permitting a network to send an ATV feed to a separate station in the same market where the NTSC affiliate

has failed to apply for or construct an ATV facility in the appropriate time frame, the Commission recognizes that the NTSC affiliate may in certain cases be able to apply for an ATV allotment in the years following and ultimately be able to offer an ATV channel to the public. In such cases, a network will continue to be allowed to affiliate with the separate ATV station. The Commission believes that this approach will provide an incentive for NTSC affiliates to construct ATV facilities as soon as possible, and despite the existence of separate ATV and NTSC affiliates in a community, the public likely would not be completely deprived of the benefits of simulcast programming. Accordingly, the Commission temporarily suspends the dual network rule in the circumstances above described until the time of full conversion.

9. Four parties asked that the Commission reconsider or defer its decision that existing broadcasters must apply for an ATV channel two years from the time that an ATV Allotment Table or an ATV standard is effective, whichever is later, and that they have a deadline for construction of an ATV station of three years. Broadcasters failing to meet these deadlines would forfeit their initial exclusive eligibility for a set-aside channel, but would still remain eligible to apply for any ATV channel at any later date. Recognizing the numerous concerns of the broadcast industry, the Commission is adjusting on reconsideration, as a preliminary matter, the application deadline from a two-year to a three-year period, and is providing for a total six-year application and construction period combined, so that a broadcaster applying early would have a correspondingly longer period of time in which to construct an ATV facility. The Commission also schedules further reviews of this preliminary determination. These reviews will be conducted just prior to the start of the application period (at the time an ATV standard or an ATV Allotment Table is effective, whichever is later) (1993) and again at the close of the three-year application period (1996). As is the case for modifications to the preliminary conversion and simulcasting timetables, the Commission will modify its application/construction schedule upon a substantial showing that such a change would further the public interest.

10. The Commission declines to defer a judgment concerning an application/construction schedule, as some urge. The application/construction deadlines will assist in the reclamation of the reversion channel by ensuring that

broadcasters have an operational second facility to which they can ultimately convert fully to ATV. Although the Commission recognizes that some stations are likely to be market leaders in the implementation of ATV under the schedule adopted, the Commission continues to believe such leadership may never emerge, at least in certain markets, without a clear framework for the ATV transition. The Commission, however, does defer addressing parties' concerns regarding the interrelationship of the application period and assignments until the Commission decides on an assignment methodology.

11. The Commission also does not believe that preliminary establishment of a six-year period for application and construction, with built-in reviews before the period actually begins to run, and again at the close of the application period, will force broadcasters into premature or counterproductive investment, as some allege. The Commission continues to believe that broadcasters need ample notice of the ATV implementation time periods. Moreover, failure to meet those time requirements will mean forfeiture of initial eligibility status only.

12. The Commission also declines to leave determination of initial application and construction periods to individual broadcaster's decisions as some suggest. The initial eligibility restriction will protect broadcasters from unfettered competition from new entrants who might have a strong economic interest in speeding ATV development and who would thereby create pressure for broadcasters to keep pace. A timetable for ATV development substitutes for the market forces that would otherwise operate to speed ATV implementation. Additionally, a fixed period will encourage rapid development of ATV transmission capability and delivery of this new technology to the American public.

13. Contrary to NAB's claim, Advisory Committee reports amply supported the initially chosen five-year application/construction period and, a fortiori, the modified six-year period the Commission now establishes. Advisory Committee Implementation Subcommittee Working Party 2 (IS/WP2) projects total implementation time, from "start to on-air", as ranging from a minimum of about one and a half years, to a typical time of slightly over two years, if an existing tower is used, and from a minimum of slightly under two years to a typical time of slightly more than three-and-a-half years if a new tower is required. Broadcasters can

therefore apply for and construct new ATV facilities within the six-year period the Commission establishes. In addition, the existing Commission policies on granting extensions will provide relief for extraordinary delays in obtaining government approvals or resulting from litigation, responding to NAB's concerns on this point. The Commission thus also declines to adopt an even more flexible approach to granting extensions for delays in obtaining local government approvals or to preempt local land use controls, as some parties request.

14. Contrary to MSTV's position, the Commission does not believe that the report of Larry F. Darby, "Implementation of Broadcast High Definition Television: Costs, Burdens, and Risks," (Darby Report) (submitted by MSTV), upon close analysis, necessarily conflicts with the implementation schedule.

15. It may be true, as Darby projects, that initial ATV receiver penetration will be low. Until a substantial number of broadcast stations are on the air, ATV penetration, and consequently revenues from ATV operations, may well be low. Allowing broadcast stations to delay implementation, as MSTV suggests, will do nothing to effectuate a consumer transition to ATV. Rather, the Commission found that such a delay would act against the public interest goals of accomplishing a swift ATV transition, and against broadcasters' goals of maximizing transitional revenues from their ATV channel. Some parties stress that other industry sectors, not subject to ATV implementation deadlines, are likely to benefit from broadcasters' implementation of ATV. However, unlike the television broadcast industry, none of these industries has been afforded the interim use of a valuable national resource, a television broadcast channel, solely for the purpose of implementing ATV. The Commission thus does not have the same responsibility to ensure spectrum efficiency with respect to these other industries. Nevertheless, it is expected that alternative media will participate early and fully in the transition to ATV. In this connection the Commission expects that alternative media (possibly including cable, VCR, DBS and computers) will begin ATV implementation promptly, thereby exerting additional competitive pressures on broadcasters to begin the transition to ATV.

16. In addition, contrary to some requests, the Commission adheres to its decision not to make ATV receiver penetration a factor in granting

individual construction permit extensions or extending application/construction time. As stated previously, the Commission will take into account any new data regarding ATV receiver availability and projected penetration rates at the time of its reviews of the application and construction deadlines. In providing for this adjustment mechanism, the Commission means to allay concerns that broadcasters will be forced to make investments that are premature and ill-suited to marketplace realities.

17. The Commission believes that the above modifications are preferable to relaxing, as suggested by some parties, the financial qualifications a television broadcast applicant must demonstrate after applying for an ATV channel. The Commission maintains that the extension of the application period and the sliding scale the Commission will apply to construction deadlines will permit broadcasters to take better advantage of economies of scope. The existing Commission Rules require that a broadcast station applicant show that it has reasonable assurance of committed sources of funds to construct and operate a broadcast facility for three months. To require less, as some suggest, would permit the award of a construction permit to a broadcaster without reasonable assurance of its being able to fund the construction, thus increasing the probability that applicants would "tie up" ATV spectrum for the three-year construction period without ever obtaining the funds needed to build the facility. This is contrary to one of the reasons the Commission is restricting initial eligibility to existing broadcasters in the first place—i.e., their ability to implement ATV swiftly. The Commission similarly declines to modify its adherence to existing rules which do not permit an extension of a construction permit for inability to obtain financing, as some ask. Relaxation of this policy would jeopardize the Commission's goal of prompt implementation of ATV facilities.

18. The Commission also does not adopt a staggered approach to initial ATV implementation, with large markets implementing first and small markets last, as some parties ask. The Commission recognizes that many small market stations produce less revenue than many large market stations, and consequently may find it more difficult to finance a transition to ATV. The Commission's extension of the application period and its "sliding scale" approach to construction periods should provide such stations adequate relief.

Should it appear that these time periods are insufficient, the Commission has a mechanism in place to adjust them prior to the onset of implementation, and again at the projected midpoint. The Commission reiterates that failure to meet these deadlines forecloses initial eligibility only. A station will be free to petition for an available allotment or apply on a non-priority basis for any such channel allotments which are added at any time. Moreover, the Commission does not believe that staggering by market size, as some commenters propose, would necessarily achieve the desired result of targeting the correct stations. Additionally, staggering might cause administrative delays and ultimately could impede the activation of ATV service.

19. One party urged that the Commission modify its regulatory approach to initial ATV implementation to allow ATV conversion channels that are not used during our initial application/construction period to be allocated for alternative non-broadcast use by other parties. The Commission finds that this approach would be inconsistent with its previous ruling (Second Report/Further Notice, 57 FR 21744, 21755, May 22, 1992) to open such channels to other qualified television broadcast applicants. On a related matter, the Commission was also asked to permit proposed users of reversion channels (channels that are to be returned by broadcasters at the point of conversion) to expedite conversion by helping to finance its costs. Although the Commission makes no decision on whether a marketplace solution of this nature might eventually be appropriate for ATV, the Commission believes it is prematurely raised at this time. The Commission also finds that the question of the appropriate use for the reversion spectrum to be reclaimed at the time of full conversion is beyond the scope of this proceeding.

20. The Commission deferred a decision on an ATV assignment methodology until comments on the recently released Second Further Notice of Proposed Rule Making (57 FR 36652, August 26,) are submitted and the Commission has decided on an allotment methodology.

21. The Second Report/Further Notice adopted several special measures designed to protect vacant noncommercial allotments. For example, the Commission stated that vacant noncommercial allotments will be used for ATV only where there is no feasible alternative for assigning an ATV channel to an existing broadcaster. Vacant noncommercial allotments will

be left without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel, according to the Second Report/Further Notice.

22. The Commission now finds that regardless of the assignment methodology ultimately adopted an additional measure should be taken on behalf of noncommercial interests: Creation of a noncommercial reserve. Such a reserve will ensure that ATV channels created for vacant NTSC noncommercial allotments are available only to qualified noncommercial parties. It will also ensure that noncommercial entities do not face renewal challenges from commercial applicants. Should the Commission decide to assign ATV channels by pairing them with NTSC channels, as some propose, the Commission will create a reserve at that time. Should another methodology, such as first-come, first-served, be adopted, the Commission will reserve noncommercial channels at the time initial assignments to noncommercial entities are made. It is possible, however, that after initial assignments are made, vacant ATV allotments which correspond with NTSC noncommercial stations or reserve channels will remain unassigned, and more than one channel will be available which could be assigned to a noncommercial station or vacant allotment. Should this occur, the Commission will initiate a general rulemaking to determine the methodology which should be employed for the designation of reserved channels. We thus decline to establish at this time, criteria, as one party suggested, for setting aside reserve channels. The Commission disagrees with Public Television that even if first-come, first-serve assignment is used, we should create a noncommercial reserve prior to initial assignments in a Final Table of Allotments.

23. The primary purpose of a first-come, first-served approach would be to give parties able to construct ATV stations expeditiously their preferred channels. It would contradict this objective to give priority to a reserve for parties that may not come forward to build for several years and may not even now exist. In addition, the Commission does not believe that the differences between the ATV channels allotted will be so significant as to cause a serious disadvantage to any noncommercial broadcaster who receives a channel at the end of the assignment process.

24. The Second Report/Further Notice concluded that it would probably be necessary for new ATV assignments to

displace at least some low-power television (LPTV) and translator service stations in major markets, although the impact of displacement would likely be less severe in rural areas. The Commission found that LPTVs and translators, as secondary services, must yield to new full-power ATV stations. The Commission found that there is insufficient spectrum to include LPTVs and translators in the initial eligibility for an ATV frequency on either a primary or secondary basis or generally to factor in LPTV displacement considerations in making ATV assignments. However, the Commission adopted several measures designed to help mitigate the effects of displacement, e.g., the Commission continued to permit a displaced low power TV station to file for a noncompetitive replacement channel in the same community, and stated that a rulemaking will be initiated considering certain specific NTSC interference protection rule changes that had been requested.

25. On reconsideration, Polar argues that the LPTV industry must be included in the Commission's regulatory approach so that ATV can be introduced as quickly and efficiently as possible. Polar also asks that the Commission assign LPTV-occupied channels as ATV channels if and only if there are no other technically suitable channels available for ATV broadcast by existing full-service broadcasters. Polar requests that the existing service of LPTV broadcasters be protected vis-a-vis vacant full-service allotments, vacant noncommercial allotments, applicants for new NTSC permits filed after December of 1991, new NTSC or ATV allotments, and, where suitable alternative ATV channels are available, full-service broadcasters. Polar also seeks a two-year competition-free application period for LPTV after the initial ATV assignments are made. Polar believes that otherwise, the Commission's ATV objectives will not be met among the specialized audiences served by the low power television service.

26. The Commission, while continuing to decline to modify its policy regarding the secondary status of LPTV as Polar requests, concurs with Polar's view that ATV should be implemented as expeditiously as possible. The Commission reiterates that low-power television service has a role in our regulatory approach to ATV. As the Commission previously stated, however, full-service stations, by definition, can reach larger audiences than the low power television service stations. It thus

further the Commission's goals in this proceeding to permit full-service stations to take priority over the secondary services in the implementation of ATV. The Commission does not believe that furtherance of this policy necessarily entails a comprehensive change in the secondary status of low-power television service stations, as low power television interests suggest. This view is consistent with the view that ATV is an advance in technology, not a new video service. Further, low power television service operators have been on notice since 1987 that they would be considered secondary to ATV and were subject to displacement by full-service ATV stations. In addition, all meetings of the Advisory Committee and its subgroups are open to the public. The Commission encourages low-power television service interests to increase their participation in that body's activities, thus ensuring adequate representation in the Advisory Committee.

27. The Commission also disagrees that any other displacement approach than what Polar proposes would mean the loss of existing service merely to accommodate new speculative broadcast authorizations. As stated in the Second Report/Further Notice, low power television service stations will continue to be permitted to operate until a displacing full-service ATV station is operational. As the pending Second Further Notice bears out, it will be a challenge to provide existing full-service broadcasters sufficient ATV spectrum to satisfy their needs and the public's interest in the broadest and most efficient dissemination of this new transmission mode. The Commission declines to further constrain the ATV allotment/assignment process by affording low power television stations priorities not generally afforded to services with secondary status. The Commission believes that large markets will be particularly congested; that in other markets, low-power television channels may be the ones most likely to optimize or replicate coverage of existing broadcasters; and that low-power television channels will be necessary for full-service transition to ATV. The Commission also believes that, in rural or small markets, substitute LPTV channels are likely to be available for displaced low-power television stations. The Commission finds that Polar's proposal would give low power television stations priority over vacant noncommercial allotments, contrary to our previously articulated policies. Contrary to Skinner's position, the

Commission also disagrees that its policies toward low power television displacement are unreasonable, inefficient, or a taking of property in violation of the Fifth Amendment.

28. The Commission also adheres to its decision not to narrow the group of potentially ready, willing, and able¹ applicants once the initial eligibility restriction is lifted. The Commission agrees with the view that Polar's request for a subsequent two-year LPTV application period would mean a change in low power television's secondary status. It would prevent existing broadcasters or new full-service applicants from applying during that time. Low power television service broadcasters may, of course, apply for ATV channels when the initial eligibility restriction is lifted. At such point, open competition will determine who the most qualified parties are. The Commission maintain its determination not to restrict further such competition beyond the three-year initial eligibility restriction.

29. The Second Report/Further Notice concluded that low power television services should be free to broadcast in either the ATV or NTSC mode. The Commission also proposed to require low-power television service stations to convert to ATV at the same time that full-service broadcast stations are required to convert. After reviewing the comments on this issue, the Commission now concludes that such a requirement would overly burden low power stations, many of which are small, community-oriented enterprises. Such a requirement might ultimately result in a reduction of program diversity. The Commission thus tentatively adopts a flexible approach that permits low power television service broadcasters to convert to ATV in response to local demand. The Commission accordingly will not mandate at this time low-power television service conversion to ATV by a certain date. In light of this decision, Polar's proposal that low-power television stations be afforded primary status upon mandatory conversion to ATV is moot.

30. The Second Report/Further Notice put broadcasters on notice that, when ATV becomes the prevalent medium, they will be required to convert to ATV—i.e., to surrender their reversion channel and cease broadcasting in NTSC. The Commission also concluded that establishment of a firm date for conversion would keep administration simple, assure progress toward freeing spectrum on a timely basis, and give affected parties the benefits of a clearly defined planning horizon.

31. The Second Report/Further Notice tentatively concluded that the Commission should establish a date for conversion that is 15 years from the date that adoption of an ATV system or a final Table of ATV Allotment is effective, whichever is later. The Commission agrees, as a preliminary matter, with those commenters who state find this an adequate time frame. It appears that this period will allow equipment manufacturers, broadcasters and consumers sufficient time to accept conversion without significant market disruption or uncertainty.

32. The Commission does not accept the position held by one party that 15 years is too long a period of time for conversion. The Commission has already stated that it will permit the voluntary surrender of an NTSC channel prior to conversion by a broadcaster awarded a corresponding ATV channel on a case-by-case basis, considering in particular whether ATV receiver penetration in the affected community demonstrates that consumers will not be prematurely deprived of the use of their NTSC receivers. The Commission thus has already provided for prompt recapture of spectrum in those cases where the ATV transition occurs ahead of our projected schedule.

33. The Commission believes that a 15-year conversion period is reasonably supported by the data now available, and adopts this period as a preliminary matter. The Commission recognizes, however, that the data upon it is relying in support of the 15-year conversion period consists largely of projections that are subject to change as more information regarding ATV is obtained. The Commission, in order to ensure avoiding making an inflexible decision that may be overtaken by future events, adopts a schedule of periodic reviews of our conversion deadline. Doing so will also enable the Commission to address any special issues that may arise concerning the very small (13-inch and under) receiver market and issues relating to consumer investment in second NTSC receivers.

34. Most commenters agree with the Commission's proposal to review, at the close of the application/construction period, the propriety of any conversion date established. While the Commission tentatively had established 1998 as this date, this date has now become 1999 due to the preliminary modifications made herein to the application/construction period. A 1999 review will allow a better determination of whether the informed but necessarily preliminary judgments the Commission makes now comport with marketplace developments as the

process continues. Although the Commission does not believe that 1999 is too soon to make an interim assessment of the suitability of the 15-year conversion date, the Commission believes that additional periodic information updates and ATV progress reviews are advisable to adjust, if necessary, the timetable adopted. The Commission also favors establishing these reviews prior to key points, such as the imposition of the 100 percent simulcasting requirement and the final deadline for returning one simulcast channel. Accordingly, the Commission adopts the following schedule for periodic review of information relating to the conversion deadline:

1. 1999, at the close of the application/construction period.

2. 2002, prior to implementation of the 100 percent simulcast requirement.¹

3. 2008, prior to full conversion to ATV.² The Commission emphasizes that the conversion schedule will not be modified without a substantial showing that the change is in the public interest.

35. The Commission does not agree with those parties who contend that it should depart significantly from the overall conversion plan by allowing broadcasters a virtually indeterminate period in which to choose whether and when to convert to ATV. The Commission reiterates that broadcasters are being awarded interim use of an additional 6 MHz channel to permit a smooth, efficient transition to an improved technology with as much certainty and as little inconvenience to the public and the industry as possible. The commission clarifies that, in general, broadcasters who do not convert to ATV will nevertheless have to cease broadcasting in NTSC at the final conversion date. Based on projections about the United States television market's likely acceptance of ATV over the conversion period, the Commission sees no reason to award an additional 6 MHz of spectrum to broadcasters who do not wish to convert to ATV, and who do not demonstrate such motivation by constructing an ATV facility within the required time. The Commission is also concerned that such an "election" approach in the long run would impede the use of existing NTSC spectrum for services that the Commission ultimately deems to be in the public interest.

¹ At the 1999 and 2002 reviews, the Commission will also review its regulatory approach to simulcasting.

² The Commission will also review its policy regarding suspension of the dual network rule at these times.

Moreover, all of our existing data indicates that consumer acceptance of ATV by the point of conversion should be sufficiently widespread that broadcasting exclusively in ATV will be economically attractive and that continued broadcasting in NTSC will be economically unattractive. The Commission also expects that eliminating the need for both ATV and NTSC equipment will prove more convenient and less confusing to consumers. Moreover, our periodic reviews will take the extent of consumer acceptance into account before ratifying the important determination to eliminate NTSC broadcasting.

36. On the other hand, should the periodic reviews demonstrate that the conversion date should be generally advanced, the Commission will consider accelerating the deadline during these reviews. In addition, should these reviews show that it will further the public interest to permit particular broadcasters to cease broadcasting in NTSC prior to the date set for full conversion, the Commission will consider doing so.

37. One party, Sony Corporation of America (Sony), advocates that the United States adopt a single production standard, specifically, the SMPTE 240M-1125/60 production standard and the SMPTE 260M digital production standard. It cites this standard's acceptance as a "de facto HDTV production standard—worldwide—in multiple market niches."³ Sony estimates that use of such a single worldwide standard will achieve considerable economies, and that cameras using different single-nation standards would cost considerably more. Other parties disagree, arguing that the SMPTE 240M and 260M standards are not equally compatible with all of the ATV proponent systems, that the industry will need several levels of performance formats to meet the Commission's goals of routineness and affordability for conversions among production formats, and that studio equipment manufacturers will not commit to build equipment until a U.S. transmission standard is adopted, making the adoption of a production standard now premature.

38. The Commission notes, as Sony acknowledges, that the Society of Motion Picture and Television Engineers (SMPTE) is still in the process of adopting several ATV production standards. SMPTE is also a member of the Advanced Television Systems Committee (ATSC) and has been

designated by that organization to develop studio/production technical specifications once an ATV system is adopted. Historically, the FCC has not set broadcast production standards, the Commission believes that such intervention would be particularly unwise in this case, where industry standards-setting bodies are actively engaged in and organized specifically for addressing this question. Accordingly, the Commission is not proposing to adopt a production standard for broadcast ATV service.

39. In its reconsideration petition, Public Television requests waivers of the Commission's conversion policy for applicants proposing to build both NTSC/ATV facilities in an area unserved by a noncommercial station, if ATV penetration is insufficient to allow ATV-only operation. The Commission finds such a request premature, and observes that should such cases arise, they can be addressed individually or at the time of the periodic reviews.

40. The Second Report/Further Notice concluded that the Commission should require 100 percent simulcasting of the programming on the ATV channel at the earliest appropriate point. The Commission noted that such a requirement would help ensure that consumers are not prematurely deprived of the benefits of existing television receivers and other devices. The Commission stressed that the ATV channel is not a permanent grant of two 6-MHz channels to existing broadcasters, but rather is intended to facilitate the transition to full ATV service.

41. The Commission now concludes as a preliminary matter that it should impose a 50 percent simulcasting requirement one year after the six-year application/construction period ends. The Commission also decides preliminary to apply a 100 percent simulcasting requirement two years thereafter, i.e., three years after the six-year application/construction period ends and nine years after ATV implementation begins. However, the Commission will review this schedule both at the time of the initial review of conversion, in 1999, and immediately prior to imposition of 100 percent simulcasting, in 2002. As the Commission stated in the Second Report/Further Notice, at the point that a 100 percent simulcasting requirement is imposed (at the nine-year mark) ATV should be established, and the need to afford broadcasters some flexibility in starting up ATV operations and to cope with the new technical issues simulcasting will raise, will have

diminished. At the same time, ATV receiver penetration, and hence revenues from ATV programming, should be increasing. With the ascension of ATV service, the need to protect remaining NTSC viewers, provide for a smooth transition to ATV, and ensure surrender of the reversion channel will increase. Imposition of 100 percent simulcasting at this juncture will protect consumer investment in NTSC, while at the same time promoting ATV implementation and ensuring spectrum efficiency. The Commission recognizes, however, the concerns of certain parties that its ability to impose simulcasting and ultimately to reclaim the reversion channel not be impeded by broadcaster reluctance to shift from complete programming flexibility to 100 percent simulcasting nine years after ATV implementation begins. The Commission thus believes to ensure as smooth a transition to full simulcasting as possible for both broadcasters and viewers, this requirement should be phased in. Accordingly, the Commission will require 50 percent simulcasting in year seven, one year after the application/construction period closes.

42. This approach will also afford broadcasters seven years of initial flexibility to explore the creative potential of the ATV mode and to attract viewers to ATV, as most commenters argue is needed. The Commission agrees with one party who suggests that the viability of ATV may hinge on consumers' ability to differentiate ATV from NTSC programming. Thus, broadcasters and program producers should be afforded sufficient time and flexibility to establish, as a technical matter, a distinctive ATV format in the marketplace. Such distinction may be necessary to enable broadcasters to compete with radically enhanced NTSC services such as video-on-demand. Additionally, some parties predict that consumers will only purchase ATV receivers in the volume necessary to have a significant impact on costs when sufficient ATV programming is available. Thus, initial flexibility may be critical to the rapid development and ultimate success of ATV, to encourage broadcasters to air programming uniquely suited to the technical capabilities of the ATV mode. In any case, initial flexibility also may be necessary from a purely technical point of view.

43. The Commission is not imposing a 100 percent simulcasting requirement from the outset, as some parties urge, fearing that we will be unable to reclaim the reversion channel under any other

³ Sony Comments at 1, 5, 12.

simulcasting regime. The Commission has ensured that ATV is a replacement service, and will reclaim the reversion channel at the conversion date, i.e., 15 years from the time an ATV Allotment Table/standard is effective. Indeed, one of the Commission's purposes in setting a simulcast timetable now is to prepare broadcasters for such an eventuality. The Commission does not believe that, as a policy matter, permitting broadcasters initial complete flexibility for one year after the application construction period closes, at which point the Commission will begin to phase in a simulcast requirement, will result in the creation of a permanent separate programming service on the ATV channel. Indeed, assuming that technical difficulties alluded to above can be overcome, there is evidence that programming on the ATV channel may initially consist largely of material unconverted from the NTSC format. The Commission also does not believe that legal considerations require a more rigorous simulcasting regime, as one party suggests. Also, as a practical matter, because in initial ATV receiver penetration is expected to be low, it is unlikely that significant numbers of viewers will have come to rely on any separately programmed material on the ATV channel by the time the Commission begins to impose a simulcasting requirement. Should ATV penetration be higher than initially projected, the Commission can make the appropriate adjustment in its 1999 review. The Commission thus disagrees with those who favor 100 percent simulcasting from the outset, as well as with those who seek the ultimate addition of some flexibility to program without limit in response to viewer demand, as opposed to implementing a 100 percent simulcasting requirement.

44. The Commission also does not agree with those who would defer any decision on a simulcasting requirement. Broadcasters, manufacturers, programmers, and consumers need a clear planning horizon to make the transition to full ATV broadcasting smoothly and with minimal financial disruption. The preliminary timetable the Commission establishes, together with the provision for its review, should alleviate parties' concerns that the schedule will hinder broadcaster flexibility and effective development of ATV. This schedule permits broadcasters to adjust gradually to the new demands of this technology and develop ATV markets accordingly, without threatening NTSC service. The Commission thus adequately accommodates NAB's concern that the

broadcasters be allowed sufficient flexibility to finance and attract viewers to the second ATV channel, while at the same time fulfilling the Commission's objectives of protecting NTSC viewers, assuring spectrum efficiency and accomplishing a smooth technological transition. The Commission also believes that its regulatory approach is sufficiently flexible that it is unnecessary to afford special relief to classes of stations that may be at a competitive disadvantage, as one party suggests.

45. It is true, as some suggest, that this two-stage implementation would offer less flexibility during the introductory period of ATV than if the Commission only imposed a simulcasting requirement at the nine-year mark. The Commission believes that phase in of the requirement, however, will begin to accustom both broadcasters and viewers to simulcasting, and thus make the ultimate transition to full simulcasting easier. The Commission therefore agrees with those who advocate such a phased-in approach.

46. The Commission also believes that the simulcast regime adopted is sensitive to the First Amendment concerns which some parties raise. The Commission believes that its presumptive deadlines and schedule for review provide adequate opportunity for any necessary adjustments. The Commission is also affording broadcasters considerable latitude regarding content and scheduling of simulcast programs through the flexible definition of simulcasting adopted. The Commission believes that it may, consistent with the Constitution, condition access to the conversion channel on compliance with the simulcast regime adopted.

47. The periodic reviews will permit calibration of the regulatory requirements to marketplace conditions as they develop. In those reviews, the Commission can take account of the development of consumer downconverters and other similar alternatives to purchase of new receivers, ATV set penetration and cost, ATV programming, and audience share and ratings. The Commission believes that reviews at the close of the application/construction period, in 1999, and again in 2002, prior to imposition of one hundred percent simulcasting, will provide significant additional evidence on these questions, while giving broadcasters renewed notice of what their simulcasting obligations will be. The Commission will modify the simulcast timetable only upon a

substantial showing that such change furthers the public interest.

48. For the reasons given below, the Commission defines simulcasting as the broadcast on the NTSC channel, within 24 hours, of the same basic material as that broadcast on the ATV channel, with the exclusion of commercials and promotions. The Commission will not permit the use of the ATV conversion channel of an ATV-NTSC pair for subscription services on a stand-alone basis. This restriction applies to the use of the ATV conversion channel throughout the 15-year transition period, not merely during the period in which simulcasting is required.

49. All parties commenting on the issue agree that the Commission should define simulcasting as the broadcast of the same basic or underlying material. This would permit variances in production techniques, such as different aspect ratios, camera angles, and number of cameras, and the insertion or deletion of specific material, which may be necessary because of technical differences between ATV and NTSC. This approach would also help showcase the differences in the two technologies and thus help increase consumer attraction and ultimately ATV receiver penetration. The Commission also agrees with the consensus of commenting parties that "program," for purposes of the simulcasting definition, should exclude commercials and promotions. The Commission also clarifies that simulcasting means the broadcast of the same basic material as shown on the ATV channel on the NTSC channel, but not also the converse. One main concern in imposing simulcasting is the protection of consumer investment in existing equipment. This goal is satisfied by insuring that NTSC viewers are shown the same programs as ATV viewers. Requiring broadcast of NTSC programming on the ATV channel would also not further any of the other policies underlying the simulcast approach.

50. The Commission further agrees with those commenting parties who support defining "simulcast" of a program as broadcast of that program within a 24-hour period. Permitting multiple plays of ATV programs that can be downconverted and simulcast on NTSC should ease any technical difficulties that may remain at the time of simulcasting in downconverting particular types of ATV programs, as well as any difficulties broadcasters may face in locating, arranging for, and establishing relations with sources of new ATV programming. Allowing pre-released and multiple plays of programs on the ATV channel within a 24-hour

period could increase the attractiveness of the ATV channel to viewers, thus helping to spur ATV penetration. The 24-hour rule will not disenfranchise NTSC-only viewers, as viewers will still see essentially the same programs, only at different times. A 24-hour rule will allow broadcasters to increase ATV penetration through new means of attracting consumers to ATV, to experiment creatively with ATV program scheduling, and to respond more freely to local market demands. Such a definition will thus further the implementation of ATV in an expeditious and efficient manner. Indeed, this added flexibility may provide the spur to ATV implementation and penetration that will permit swift recapture of the reversion channel. Moreover, if it appears that ATV develops in a fashion making these rules inappropriate, the Commission will be able to modify them at the periodic reviews prior to phase in of the simulcasting requirement.

51. Contrary to one proposal, the Commission will not allow broadcasters with ATV/NSTC channel pairs to use their ATV channel for a stand-alone subscription ATV service, separate from a free NTSC service. To do so would encourage use of the ATV channel as a separate service, based on subscriber and not advertiser revenues. These effects and incentives are contrary to the reason the Commission is awarding broadcasters a second channel—to permit the viewing public to make a nondisruptive transition to ATV and allow the reclamation of the second channel after that transition is complete.

52. The Commission defers establishing a definition of what is or is not ATV programming until a record is developed on other types of advanced technology that might be appropriately permitted on the ATV channel. It believes that to define what is or is not ATV programming at this time might lead to inadvertent prohibition of some sources and formats of programs on ATV channels that would be highly desirable to viewers. The Commission also defers a decision on a recommendation for a requirement of a minimum number of hours that broadcasters must air of "true" HDTV quality programming, while reiterating its intention that the ATV channel not be squandered.

53. The Commission has previously stated that in order for ATV implementation to be fully realized, the patents on any winning ATV system

would have to be licensed to other manufacturing companies on reasonable terms. The ATV testing procedures already require proponents to submit, prior to testing, a statement that any relevant patents they own would be made available either free of charge or on reasonable, nondiscriminatory terms. Contrary to the views of some, the Commission continues to believe that this requirement adequately safeguards the consumer and competitive interests in reasonable availability of relevant patents, and thus, that greater regulatory involvement is not necessary at this time. The Commission nevertheless appreciates the importance of this issue, and will remain responsive to any complications or abuses that may arise. The Commission also reiterates that the selection of an ATV system will be conditioned on the proponent's commitment to reasonable and nondiscriminatory licensing of relevant patents.

54. The Second Report/Further Notice recognized the importance of prompt disclosure of a winning system's technical specifications to the mass production of ATV professional and consumer equipment in a timely fashion.

According to ATSC, immediately after the Advisory Committee recommends a system, ATSC will document the ATV technical standard as it will be implemented for broadcast transmission. Other industry groups will document the specifications needed for other media. The Commission appreciates the diligence with which ATSC and the other groups participating in standardization and pursuing these matters, as well as the attention which the Advisory Committee has given this question. The Commission encourages ATSC and its member groups to begin the actual documentation process as soon as they have sufficient data.

55. The Second Report/Further Notice recognized the importance of ATV compatibility with other transmission forms and media applications, both in terms of the successful marketplace acceptance of ATV and for purposes of selecting an ATV transmission standard. Parties commenting on the issue generally favor such compatibility, some noting in particular the importance of compatibility with other video delivery media, such as cable and VCRs. The Commission also agrees with those who indicate that compatibility issues are part of the overall goals in this proceeding and must be considered with other objectives, such as timely delivery

of ATV technology to the American public. In particular, the Commission endorses the efforts of the Advisory Committee, through its Field Test Task Force, to ensure that the system selected as the ATV standard performs satisfactorily for both broadcast and cable operations. The Commission similarly encourage the ongoing efforts of the Advisory Committee to foster compatibility with computer and other data applications.

56. The Second Report/Further Notice directed the Advisory Committee (1) to address any new audio developments; (2) to address ATSC proposals for flexible use of audio and data; and (3) to consider any analogous instances of extensibility that arise. The Advisory Committee is in the process of addressing these issues, and the Commission encourage these efforts. It would be premature to intervene in these matters at this stage of Advisory Committee proceedings, as some suggest, and the Commission declines to do so.

57. The Second Report/Further Notice sought comment on the Advisory Committee's findings that there are no new technologies that offer important new benefits and are in a sufficiently concrete state of development to be considered with the existing systems. The majority of commenting parties concur in the Advisory Committee's assessment. However, several parties recognize that there may be potential significance in an emerging digital transmission technology, Coded Orthogonal Frequency Division Multiplex (COFDM), which is being tested in Europe. The Commission directs the Advisory Committee to monitor these developments and report as appropriate. The Commission understands that the Advisory Committee is presently exploring the potential use of multiple low power transmitters with proponent ATV systems. The Commission defers further consideration of this question until this task is complete. The Commission also defers the related question of permitting stations to initiate ATV broadcasts using relatively low power facilities, until release of the IS/WP2 report.

58. Two other commenters, Quadratic Solutions, Inc., and Future Images Today, outline in their pleadings new HDTV technologies. It appears that these parties have yet to submit documentation to the Advisory

Committee showing that their systems "offer important new benefits" and "are in sufficiently concrete state of development to be considered with the existing systems." (First Report and Order, 5 FCC Rcd at 5629, 55 FR 39275.)

Procedural Matters

Regulatory Flexibility Act Statement

59. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision impacts a substantial number of small entities because the actions taken in this decision and in other decisions in this proceeding will result in the selection of an ATV system and standard, in specifications for production of equipment to both transmit and receive ATV signals, and in the rules and regulations governing transmission ATV signals and operation of ATV signals. The full text of this Final Regulatory Flexibility Act Statement may be found in Appendix C of the complete text of the Third Report/Third Notice.

Ordering Clauses

60. Accordingly, it is ordered that pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154 and 303, this Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making is adopted.

61. It is further ordered that the Petitions for Reconsideration filed by America's Public Television Stations, et al., Association for Maximum Service Television, Inc., Diversified Communications, et al., National Association of Broadcasters, National Capital Communications, Inc., and Polar Broadcasting, Inc., et al., are granted in part and deferred in part to the extent indicated herein and otherwise denied.

62. It is further ordered that the Motion for Leave to File Comments out of Time of the Office of Advocacy of the Small Business Administration is granted and its Comments are accepted.

List of Subjects in 47 CFR Parts 73 and 74

Television broadcasting.
Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 92-27349 Filed 11-10-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 206, 213, 214, 215, 217, 223, 225, 227, 231, 235, 242, 245, 252, 253, and Ch. II Appendices F and G

[Defense Acquisition Circular (DAC) 91-4]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-4 amends the Defense FAR Supplement (DFARS) to revise or add language on small purchases, purchases from military exchanges, cost or pricing data, multiyear contract funding, hazardous waste liability, secondary Arab boycott of Israel, qualifying country sources, waiver of United Kingdom levies, carbon, alloy and armor steel plate, severance pay to foreign nationals, independent research and development and bid and proposal costs, antitrust notification, and distribution of DD Form 250.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Martin, Defense Acquisition Regulations System, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91-4 includes 17 rules and miscellaneous editorial amendments. Three of the rules in the DAC were published previously in the *Federal Register* and thus are not included as part of this rulemaking notice.

1. Item V, Bond Waiver for 8(a) Contractors, is an interim rule published August 24, 1992 (57 FR 38286).

2. Item VI, Pilot Mentor-Protege Program, is an interim rule published October 15, 1992 (57 FR 47270).

3. Item XII, Subcontractor Payment Protections, is a final rule published September 16, 1992 (57 FR 42707).

B. Regulatory Flexibility Act

DAC 91-4, Items II, III, IV, IX, XV, XVI, XVII

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 92-610 in correspondence.

DAC 91-4, Items I, VII, VIII, X, XI, XIII

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item I—The rule only applies to purchases awarded and performed outside the United States during a contingency operation.

Item VII—Most businesses performing hazardous waste treatment or disposal services are required to carry liability insurance to comply with State and local ordinances.

Item VIII—The rule applies only to contracts with foreign persons, companies, or entities.

Item X—Few, if any, small entities are expected to have subcontracts greater than \$1 million with United Kingdom firms.

Item XI—The rule imposes restrictions on the acquisition of foreign products.

Item XIII—Most contracts awarded small entities are awarded on a competitive, fixed price basis and the cost principles do not apply.

DAC 91-4, Item XIV

The Regulatory Flexibility Act applies. A final regulatory flexibility analysis has been performed and is available by writing the Defense Acquisition Regulations System, ATTN: Mr. Eric Mens, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

C. Paperwork Reduction Act

DAC 91-4, Items I, II, III, IV, VIII, IX, XI, XIII, XIV, XVI, XVII

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 94-1, Items VII, X, XV

The Paperwork Reduction Act applies. OMB has approved the information collection request for Item VII under clearance 0704-0343, through July 31, 1995; Item X under clearance 0704-0339, through March 31, 1995. A request for clearance reducing the burden for item XV has been submitted to OMB.

List of Subjects in 48 CFR Parts 204, 206, 213, 214, 215, 217, 223, 225, 227, 231, 235, 242, 245, 252, and 253

Government procurement.
Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Defense Acquisition Circular (DAC) 91-4 amends the Defense FAR

Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Small Purchases in Support of Contingency Operations

DFARS 213.000 and 213.101 are added to implement section 805 of the Fiscal Year 1992 National Defense Authorization Act. Section 213.000 and 213.101 increase the small purchase threshold up to \$100,000 for any contract to be awarded and performed or purchase to be made, outside the United States in support of a contingency operation declared by the Secretary of Defense. DFARS 204.670-2 and 253.204-71 are revised to provide instructions for reporting such small purchase awards over \$25,000.

Item II—Purchases from Military Exchanges

DFARS 206.302-5(b) is added to reflect the authority of 10 U.S.C. 2424 for acquisition of supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States.

Item III—Defective Cost or Pricing Data

DFARS 215.804-8(a) is deleted. It required use of the clause at FAR 52.215-22, Price Reduction for Defective Cost or Pricing Data, when obtaining partial cost or pricing data. This instruction is not consistent with DFARS 215.804-1(a) which says partial or limited data shall not be certified.

Item IV—Multiyear Contract Funding

DFARS 217.102-3(d)(3) is added and 217.103-1(a)(iii) is revised to clarify funding requirements for advance economic order quantity acquisitions associated with multiyear contracts.

Item V—Bond Waiver for 8(a) Contractors

This is an interim rule. DFARS 219.808, 219.811 and the clause at 252.219-7007 were added by Departmental Letter 92-007, effective August 14, 1992, to implement section 813 of the Fiscal Year 1992 National Defense Authorization Act (Pub. L. 102-190). Section 813 authorizes the Secretary of Defense to waive Miller Act requirements for surety bonds on construction contracts awarded to small disadvantaged businesses under the Section 8(a) program. Section 813 requires that DoD make every reasonable effort to award no less than 30 contracts each fiscal year using this authority.

The DFARS implementation of section 813 is designed to encourage use of the bond waiver authority in all appropriate instances. Waiver authority is delegated to a level above the contracting officer. When an 8(a) firm is unable to obtain the requisite bonding for an 8(a) construction award and, except for bonding, the contracting officer finds the firm responsible, the requirement for bonds should be waived.

Item VI—Pilot Mentor-Protege Program

By Departmental Letter 92-10, DFARS language on the Pilot Mentor-Protege Program was revised to implement section 814 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190) and section 8064A of the Fiscal Year 1992 Department of Defense Appropriations Act (Pub. L. 102-172).

DFARS 219.7100 and 219.7102(b) are revised to permit organizations employing the severely disabled to participate as protege firms. DFARS 219.7102(d) and 219.7104(e), redesignated as 219.7104(d), are revised to permit subcontracting plan goal credit for developmental assistance costs reimbursed through indirect expense pools. The prohibition at 219.7104(b) on payment of profit on developmental assistance costs is eliminated. DFARS 219.7103-1 is revised to indicate that DoD will be issuing solicitations for mentor-protege program efforts. A contract clause has been added at 252.219-7008, Pilot Mentor-Protege Program, and a prescription for the clause at 219.7107, to inform contractors about the program. These interim revisions were effective October 5, 1992.

As a matter of information, a copy of the current program policy statement entitled "DoD Policy for the Pilot Mentor-Protege Program" is included as an attachment in this DAC.

Item VII—Hazardous Waste Liability

The interim rule published as Item VII of DAC 91-2 is converted to a final rule. The interim rule added DFARS Subpart 223.70 and a clause at 252.223-7005 to implement section 331 of the Fiscal Year 1992 National Defense Authorization Act. Section 331 requires that contractors and subcontractors performing hazardous waste treatment or disposal services for DoD reimburse the Government for any damages caused by the contractor's or subcontractor's negligence or breach of contract. The final rule differs from the interim rule in that the clause at 252.223-7005 is revised to more accurately reflect the provisions of section 331.

Item VIII—Secondary Arab Boycott of Israel

This item revises and converts the interim rule published as Item XII of DAC 91-3 to a final rule. DFARS 225.770-2, Procedures, has been added to recognize the special arrangements for contracting with the Canadian Commercial Corporation.

Item IX—Qualifying Country Sources

Austria and Finland are added to the list of qualifying countries in DFARS 225.872-1(b). The offer of an Austrian or Finnish end product may, on a case-by-case basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest.

Item X—Waiver of United Kingdom Levies

DFARS 225.873 and a clause at 252.225-7032 are added to facilitate waiver of United Kingdom commercial exploitation levies.

Item XI—Carbon, Alloy, and Armor Steel Plate

This Item converts the interim rule published as Item XI of DAC 91-2 to a final rule with minor changes. The clause at 252.225-7030 has been revised to clarify that the restriction does not apply to end items incidentally containing restricted materials, but rather to acquisition of the restricted items.

Item XII—Subcontractor Payment Protections

DFARS Subparts 228.1 and 232.9 were revised and a clause was added at 252.228-7006 by Departmental Letter 92-009 as implementation of section 806 of the Fiscal Year 1992 National Defense Authorization Act. Section 806 requires disclosure of certain payment and bonding information under DoD contracts. These revisions were effective September 8, 1992.

Item XIII—Severance Pay to Foreign Nationals

DFARS 231.205-6 is added to reflect statutory restrictions on allowability of severance payments to foreign nationals. Section 2324(e)(1)(M) of title 10 U.S.C. provides that the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such costs exceed amounts typically paid to employees providing similar services in the same industry in the United States. Section 2324(e)(1)(N) of title 10 U.S.C. further provides that the costs of

severance payments to foreign nationals are unallowable if the termination of employment was the result of the closing or curtailment of activities at an overseas military facility at the request of the host government.

Item XIV—Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs

This final rule implements section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190). The revisions apply to IR&D/B&P costs incurred by both major and non-major contractors during fiscal years of such contractors that begin on or after October 1, 1992. The legislation eliminates the requirement for Army, Navy, Air Force (Tri-Service) IR&D/B&P advance agreement negotiations and the formal IR&D technical review and evaluation process. Major changes include—

DFARS 225.7303-2(c)—Removed references to advance agreement ceilings and formula constraints.

DFARS 231.205-18(c)(2)—Prohibits departments and agencies from issuing supplemental regulations to limit IR&D/B&P cost allowability and provides a cross reference for foreign military sales contracts. Provides additional cost limitations and "potential interest to DoD" requirements for major contractors. Requires cognizant contract administration office to furnish contractors with guidance on financial information needed to support IR&D/B&P cost and on technical information needed to support the "potential interest to DoD" determination. Permits waiver of the total maximum allowable amount limitation at a level above the contracting officer.

DFARS 242.302—Added paragraph (a)(9) to cross reference additional contract administration functions related to IR&D/B&P projects performed by major contractors.

DFARS 242.771—Added to include DoD policy of encouraging defense contractors to engage in IR&D/B&P activities of potential interest to DoD. Assigns various responsibilities within DoD to the cognizant ACO/CACO, Defense Contract Management Command or Military Department, and Director, Defense Research and Engineering.

DFARS 242.10—Deleted because there is no longer a requirement for single lead agency advance agreement negotiations and formal IR&D technical reviews and evaluations.

Item XV—Antitrust Notifications

DFARS 245.7308 is amended to revise the threshold for submission of antitrust

notifications to the Attorney General and the General Services Administration. The threshold is changed from an acquisition cost of \$3 million to an estimated fair market value of \$3 million. Since the fair market value in most costs is less than the acquisition cost of the property, this change effectively raises the overall reporting threshold.

Item XVI—Distribution of DD Form 250

The standard distribution requirements listed in Table 1 of Appendix F, Material Inspection and Receiving Report, are revised to reduce the number of copies of the form required from contractors to nine copies. These revisions also update the address information provided in Table 1.

Item XVII—Editorial Revisions

(Note: The asterisked items are revisions being made only in the looseleaf edition of DFARS.)

(a) DFARS 204.7202-1, 204.7203, and 204.7204-1 are revised to update office symbols and make editorial changes.

(b) DFARS 214.503-1(a)(4) is removed because the language was added to FAR by FAC 90-07, Item IV.

(c) DFARS 215.804-3(i)(iii) is amended to correct a cross reference.

(d) DFARS 215.870-6(a) is amended to correct a clause title.

(e) DFARS 215.975(b) is amended to revise the Army's participating and designated offices for purposes of the DD Forms 1547.

(f) DFARS 225.102(a)(3)(A) is amended to make the change in the DFARS looseleaf edition that was described in Item IX of DAC 91-3.*

(g) DFARS 227.304-1 is amended to correct a cross reference.

(h) DFARS 227.403-70(b)(1) is amended to remove an obsolete reference.

(i) DFARS 235.015-71(i)(2) is amended to indicate that the clause at FAR 52.243-2 and Alternate V apply in short form research contracts only when the contract is with a nonprofit organization.

(j) DFARS 235.017(a)(2) is amended to clarify the fact that the prohibition applies only to DoD Federally Funded Research and Development Centers.

(k) DFARS 242.205(1)(iii) is amended to correct a payment office designation.

(l) Paragraph (b) of the clause at DFARS 252.232-7005 is amended to correct a form number.

(m) DFARS part 253 is amended to include updated DD Form 350, DD Form 879, and DD Form 1155.*

(n) DFARS Appendix G is amended to add an address.

Amendments to Defense FAR Supplement

The Defense FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 204, 206, 213, 214, 215, 217, 223, 225, 227, 231, 235, 242, 245, 252, and 253.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and FAR subpart 1.3.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670-2 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

204.670-2 Reportable contracting actions.

* * * * *

(c) Do not report on a DD Form 350, small purchase actions in excess of \$25,000 that meet the definition of "small purchase" in 213.101. Summarize these actions on a DD Form 1057 in accordance with the instructions in 253.204-71(a)(3).

* * * * *

204.7202-1 [Amended]

3. Section 204.7202-1 is amended in paragraph (c)(1) by inserting the words "or CD ROM" between the words "microfiche" and "publication"; by revising the office symbol "DLSC-JBDA" to read "DLSC-RP"; and by revising in paragraphs (c)(4) and (c)(5) the office symbol "DLSC-FEB" to read "DLSC-SBB."

204.7203 [Amended]

4. Section 204.7203 is amended in paragraph (d) by revising the office symbol "DLSC-FEB" to read "DLSC-SBB."

204.7204-1 [Amended]

5. Section 204.7204-1 is amended in paragraph (a)(4) by revising the office symbol "DLSC-FEB" to read "DLSC-SBB" and by revising in paragraph (b) the three office symbols "DLSC-FEB" to read "DLSC-SBB"

PART 206—COMPETITION REQUIREMENTS

6. Section 206.302-5 is amended by adding a new paragraph (b) to read as follows:

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and

subject to the limitations of 10 U.S.C. 2424(b).

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

7. A new § 213.000 is added to read as follows:

213.000 Scope of part.

This also implements section 805 of Public Law 102-190 (10 U.S.C. 2302(7)) which increases the small purchase threshold to \$100,000 for any contract to be awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

8. A new subpart 213.1 is added to read as follows:

Subpart 213.1—General

213.101 Definitions.

Small purchase also means an acquisition of \$100,000 or less using the procedures prescribed in FAR part 13, if the contract is awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

PART 214—SEALED BIDDING

214.503-1 [Amended]

9. Section 214.503-1 is amended by removing paragraph (a)(4).

PART 215—CONTRACTING BY NEGOTIATION

215.804-3 [Amended]

10. Section 215.804-3 is amended in paragraph (i)(iii) by revising "FAR 15.803-3(i)" to read "FAR 15.804-3(i)."

215.804-8 [Amended]

11. Section 215.804-8 is amended by removing paragraph (a).

215.870-6 [Amended]

12. Section 215.870-6(a) is amended by removing the words "Productivity Savings Rewards."

13. Section 215.975 is amended by revising the entry for Army contracting offices and designated offices in paragraph (b) to read as follows:

215.975 Reporting profit and fee statistics.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated office
ARMY: All	Army Procurement Research and Analysis Office, Attn: SFRD-KPR, Bldg 12500, C Wing, Ft. Lee, VA 23801-6045.

215.70 [Removed]

14. Subpart 215.70 is removed in its entirety.

PART 217—SPECIAL CONTRACTING METHODS

15. Section 217.102-3 is added to read as follows:

217.102-3 Objectives.

(d)(3) For additional restrictions on inclusion of recurring costs in the cancellation ceiling in DoD multiyear contracts, see 217.103-1(a)(iii) and the DoD Budget Guidance Manual (DoD 7110.1-M).

16. Section 217.103-1 is amended by revising paragraph (a)(iii) to read as follows:

217.103-1 General.

(a) * * *

(iii) Any advance economic order quantity acquisition (see FAR 17.101) is funded at least to the limits of the Government's liability. Recurring costs for such economic order quantities shall not be included in the unfunded cancellation ceiling. (Section 9021, Pub. L. 101-165).

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

17. Section 223.7002 is amended by removing in paragraph (a) introductory text the words "and Indemnification"; and by revising paragraph (b) introductory text to read as follows:

223.7002 Contract clause.

* * * * *

(b) The clause at 252.223-7005 does not apply to contracts—

* * * * *

PART 225—FOREIGN ACQUISITION

18. Sections 225.770-2, 225.770-3, 225.770-4 are revised to read as follows:

225.770-2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed

subcontractor with the other required precontractual material (see 225.870).

225.770-3 Exceptions.

The restriction does not apply to—

- (a) Purchases below the small purchase threshold in FAR 13.101;
- (b) Contracts for consumable supplies, provisions, or services for the support of the United States or of allied forces in a foreign country; or
- (c) Contracts pertaining to any equipment, technology, data, or services for intelligence or classified purposes, or the acquisition or lease thereof in the interest of national security.

225.770-4 Waivers.

The Secretary of Defense may waive the restriction on the basis of national security interests. Waiver requests should be forwarded to the Director of Defense Procurement, OUSD(A)DP.

19. Section 225.770-5 is added to read as follows:

225.770-5 Solicitation provision and contract clause.

Unless an exception applies or a waiver has been granted, use the clause at 252.225-7031, Secondary Arab Boycott of Israel, in all solicitations and contracts.

225.872-1 [Amended]

20. Section 225.872-1 is amended in paragraph (b) by adding the two countries "Austria" and "Finland" to the listing.

21. Sections 225.873, 225.873-1, 225.873-2, and 225.873-3 are added to read as follows:

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. In order for U.K. levies to be waived, they must be identified and a waiver must be requested before award of the contract or subcontract under which the levies are charged.

225.873-2 Procedures.

(a) Waiver of U.K. levies must be approved by the Government of the U.K. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Assistance Agency, Operations Management Division, room 4B740, the Pentagon, Washington, DC 20301-2800, telephone (703) 697-8108, which will request a waiver of the levy

from the Government of the U.K. The notification shall include—

- (1) Name of the U.K. firm;
- (2) Prime contract number;
- (3) Description of item for which waiver is being sought;
- (4) Quantity being acquired; and
- (5) Amount of levy.

(b) Waiver may occur after contract award. Where levies are waived before contract award, the offer will be evaluated without the levy. Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

225.873-3 Contract clause.

Use this clause at 252.225-7032, Waiver of United Kingdom Levies, in all solicitations and contracts for supplies—

(a) Where U.K. firms are expected to participate as offerors/prime contractors; or

(b) If a subcontract over \$1 million with a U.K. firm is anticipated.

22. Section 225.7017-4 is amended by revising paragraphs (a) and (b) to read as follows:

225.7017-4 Contract clause.

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate which will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

23. Section 225.7303-2 is amended by revising paragraph (c) introductory text to read as follows:

225.7303-2 Costs of doing business with a foreign government or an international organization.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205-18 do not apply to such contracts. The allowability of IR&D/B&P costs on contracts for foreign military sales shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for foreign military sales—

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.304-1 [Amended]

24. Section 227.304-1 is amended by revising "(FAR 27.304-1(d)(ii))" to read "(FAR 27.304-1(e)(2)(ii))."

227.403-70 [Amended]

25. Section 227.403-70 is amended by revising paragraph (b)(1) to read as follows:

(b) *Establishing rights in technical data.* (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227-7013(k), unless there are grounds to question the validity of the assertion. If appropriate, greater rights will be obtained pursuant to 227.402-72(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.403-73 and 252.227-7037, Validation of Restrictive Markings on Technical Data.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

26. Section 231.205-6 is added to read as follows:

231.205-6 Compensation for personal services.

(g)(2)(i) Notwithstanding the reference to geographical area in FAR 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract or subcontract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989.

27. Section 231.205-18 is amended by revising paragraph designation "(c)(1)(iii)(1)" to read "(c)(1)(i)(C)(1)"

and by adding paragraph (c)(2) to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

(c)(2) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability. See 255.7303-2 for allowability exceptions for foreign military sales contracts.

(i) In addition to the limitations in FAR 31.205-18(c)(2)(i), for major contractors—

(1) The amount of IR&D/B&P costs allowability under DoD contracts shall not exceed the lesser of—

(i) Such contracts' allocable share of incurred IR&D/B&P costs;

(ii) Such contracts' allocable share of the contractor's total maximum allowable amount; or

(iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to the DoD, including activities intended to accomplish any of the following—

(i) Enable superior performance of future U.S. weapon systems and components;

(ii) Reduce acquisition costs and life-cycle costs of military systems;

(iii) Strengthen the defense industrial and technology base of the United States;

(iv) Enhance the industrial competitiveness of the United States;

(v) Promote the development of technologies identified as critical under 10 U.S.C. 2522;

(vi) Increase the development and promotion of efficient and effective applications of dual-use technologies;

(vii) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(ii) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (see also 242.771-3(a)).

(iii) The total maximum allowable amount limitation may be waived at a level above the contracting officer. A waiver may be appropriate for

contractors whose significant growth in sales or IR&D/B&P spending justify higher levels of reimbursement.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.015-71 [Amended]

28. Section 235.015-71 is amended in paragraph (i)(2) by adding two asterisks before the clause and title "FAR 52.243-2 and Alternate V, Changes—Cost-Reimbursement."

235.017 [Amended]

29. Section 235.017 is amended in paragraph (a)(2) by adding the acronym "DoD" between the word "a" and the word "Federally".

PART 242—CONTRACT ADMINISTRATION

30. Section 242.205 is amended by revising paragraph (1)(iii) to read as follows:

242.205 Designation of the paying office.
(1) * * *
(iii) The Air force payment office (SA-ALC/FMFRS-M, Kelly AFB, TX 78241-5000)—if the contract is an Air Force contract for missile propellants.
* * * * *

31. Section 242.302 is amended by adding paragraph (a)(9) and removing paragraph (a)(11) to read as follows:

242.302 Contract administration functions.

* * * * *

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771-3(a).
* * * * *

32. Sections 242.771, 242.771-1, 242.771-2 and 242.771-3 are added to read as follows:

242.771 Independent research and development/bid and proposal.

242.771-1 Scope of subpart.

This section implements section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190) and is effective for IR&D/B&P costs incurred by a major contractor during fiscal years of that contractor that begin on or after October 1, 1992.

242.771-2 Policy.

Defense contractors are encouraged to engage in IR&D/B&P activities of potential interest to DoD, including activities cited in 231.205-18(c)(2)(i)(2).

242.771-3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine, with input from the field pricing team, whether IR&D/B&P projects performed by major contractors (see FAR 31.205-18(a)) are of potential interest to DoD.

(2) Notify the contractor promptly of any IR&D/B&P activities which are not of potential interest to DoD.

(b) The Defense Contract Management Command of the Defense Logistics Agency or the Military Department responsible for performing contract administration functions is responsible for—

(1) Implementing the requirements of section 802 of Public Law 102-190 as set forth in 231.205-18(c)(2) and FAR 31.205-18.

(2) Submitting an annual report to the Director of Defense Procurement (OUSD(A)) setting forth required statistical information relating to the DoD-wide IR&D/B&P program. The Report Control Symbol is DD-ACQ(A)1139.

(c) The Director, Defense Research and Engineering (OUSD(A)DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

242.10 [Removed]

33. Subpart 242.10 is removed in its entirety.

PART 245—GOVERNMENT PROPERTY

245.7308 [Amended]

34. Section 245.7308 is amended by revising the first sentence of paragraph (a) to read "When contractor inventory, with an estimated fair market value of \$3 million or more or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal."

PART 252—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

252.215-7004 [Removed]

35. Section 252.215-7004 is removed in its entirety.

36. Section 252.223-7005 is revised to read as follows:

252.223-7005 Hazardous waste liability.

As prescribed in 223.7002, use the following clause:

Hazardous Waste Liability (Oct 1992)

(a) Definitions.

As used in this clause—

(1) "Hazardous waste" has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls (PCB).

(2) "Polychlorinated biphenyls" (PCB) has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(b) Upon receipt of hazardous waste properly characterized pursuant to applicable laws and regulations, the Contractor agrees that it shall reimburse the Government for any penalties assessed against, all liabilities incurred by, costs incurred by, and damages suffered by, the Government that are caused by—

(1) The Contractor's breach of any term of the contract; or

(2) Any negligent or willful act or omission of the Contractor or employees of the Contractor, in the performance of the contract.

(c) Not later than 30 days after the award date of the contract, the Contractor shall demonstrate the ability to reimburse the Government as provided in paragraph (b) of this clause, by providing evidence to the Contracting Officer that—

(1) The facility has liability insurance meeting the requirements of 40 CFR 264.147; or

(2) The facility meets the financial assurance requirements of 40 CFR 264.147 for sudden and nonsudden accidental occurrences.

(d) This clause does not apply to—

(1) Performance of remedial action or corrective action under—

(i) The Defense Environmental Restoration Program;

(ii) Other programs or activities of the Department of Defense; or

(iii) Authorized State hazardous waste programs;

(2) Disposal of hazardous waste when the generation of such waste is incidental to the performance of the contract; or

(3) Disposal of ammunition or solid rocket motors.

(End of Clause)

37. Section 252.225-7030 is revised to read as follows:

252.225-7030 Restriction on acquisition of carbon, alloy, and armor steel plate.

As prescribed in 225.7017-4, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (Oct 1992)

The Contractor agrees that all carbon, alloy, and armor steel plate in Federal supply class 9515, or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, furnished as a deliverable under this contract, or purchased by the contractor as a

raw material, for use in a Government-owned facility or a facility under the control of the Department of Defense, shall be melted and rolled in the United States or Canada.

(End of clause)

38. Section 252.225-7032 is added to read as follows:

252.225-7032 Waiver of United Kingdom levies.

As prescribed in 225.873-3, use the following clause:

Waiver of United Kingdom Levies (Oct 1992)

(a) Offered prices for contracts and subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The Offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

- (1) The name of the U.K. firm;
 - (2) The item to which the levy applies and quantity; and
 - (3) The amount of levy plus any associated indirect costs and profit or fee.
- (b) If, after award of the prime contract, the Contractor contemplates award of a subcontract over \$1 million to a U.K. firm, the Contractor shall identify any levy before award of the subcontract and shall provide the following information to the Contracting Officer—
- (1) Name of the U.K. firm;
 - (2) Prime contract number;
 - (3) Description of item to which levy applies;
 - (4) Quantity being acquired; and
 - (5) Amount of levy plus any associated indirect costs and profit or fee.

(c) The Offeror/Contractor should obtain assistance in identifying the levy from the U.K. firm. In the event of difficulty, the Offeror/Contractor may seek advice through Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW, Washington, DC 20006.

(d) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) Where levies are waived before contract award, the offer will be evaluated without the levy.

(2) Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

(3) Where a waiver of the levy is obtained after award, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs, profit or fee.

(e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over \$1 million with a U.K. firm is anticipated.

(End of clause)

39. Section 252.232-7005 is amended by revising paragraph (b) to read as follows:

252.232-7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protégé program.

(b) For a fixed price type contract, advance payments made to a protégé firm shall be paid and administered as if there were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protégé firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protégé, reflecting the status of advance payments made to that protégé.

PART 253—FORMS

40. Section 253.204-71 is amended by adding a new paragraph (a)(3) to read as follows:

253.204-71 DD Form, 1057, Monthly Contracting Summary of Actions \$25,000 or Less.

- (a) * * *
- (3) Include actions over \$25,000 but not in excess of \$100,000 in support of a contingency on the DD Form 1057, as follows—
- (i) Section A, complete fully.
 - (ii) Section B, complete only lines 5, 5a, 7, and 7a.
 - (iii) Section C, complete only lines 1 and 1c, 2 and 2c, or 3 and 3c, as applicable.
 - (iv) Sections D, E, and F, leave blank.
 - (v) Section G, complete fully.

Appendix F To Chapter 2 [Amended]

41. Appendix F, Part 4, Table 1 entitled "Materials Inspection and Receiving Report" is revised to read as follows:

Material Inspection and Receiving Report

Table 1.—Standard Distribution

With Shipment*	2
Consignee (via mail).....	1
(For Navy procurement, include unit price)	
(For foreign military sales, consignee copies are not required)	
Contract Administration Office.....	1
(Forward direct to address in Block 10 except when addressee is a DCMD, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see F-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office.....	1
Payment Office**.....	2
(Forward direct to address in Block 12 except—	
(i) When address in Block 10 is a DCMD or DCMAO and payment office in Block 12 is the Defense Finance and Accounting	

Service, Columbus Center, do not make distribution to the Block 12 addressee;

(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS-CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;

(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and

(iv) When a certificate of conformance or the alternative release procedures (see F-301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.

ADP Point for CAO (applicable to Air Force only)..... 1

(When DFAS-CO/ALQ is the payment office in Block 12, send one copy to DFAS-CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS-CO/ALQ.)

CAO of Contractor Receiving GFP..... 1

(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59-H).)

* Attached as follows:

Type of shipment	Location
Carload or truckload....	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload.	Affix to container number one or container bearing lowest number.
Mail, including parcel post.	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies.

** Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.

Appendix G to Chapter 2 [Amended]

42. Appendix G, part 6, entitled "Defense Logistics Agency Activity Address Numbers" is amended by adding an activity address number to read as follows:

DLA006 Defense Distribution Region Central

UN Office of Contracting, ATTN: DDRC-P, Memphis, TN 38114-5210.

[FR Doc. 92-27232 Filed 11-10-92; 8:45 am;]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222, and 227

[Docket No. 921184-2284]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Establishment of a temporary turtle excluder device (TED) requirement and temporary observer requirement for vessels in the summer flounder trawl fishery and request for comments.

SUMMARY: NMFS notifies owners and operators of vessels participating in the trawl fishery for summer flounder from Cape Charles, Virginia, to the southern border of North Carolina, that, for a 30-day period starting November 15, 1992, they must use a NMFS-approved TED in any net that is rigged for fishing, unless exempted from doing so by NMFS. In addition, vessels must, if selected to do so by the Director Southeast Region, NMFS, carry an observer to monitor compliance with required conservation measures and incidental capture of sea turtles.

This action is necessary to protect threatened and endangered sea turtles in the area, and is authorized by 50 CFR 227.72(e)(6). This temporary requirement to use TEDs is necessary to avoid the risk that the summer flounder fishery could jeopardize the continued existence of endangered sea turtles and in order to allow the fishery to continue. NMFS may extend this requirement beyond 30 days and impose additional temporary sea turtle conservation measures on the fishery for summer flounder as necessary to protect sea turtles.

DATES: This action is effective November 15, 1992 through December 15, 1992. Comments on this action must be received by December 15, 1992.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. Michael Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366) or Colleen

Coogan, Protected Special Program, NMFS, Northeast Region (508/281-9291).

SUPPLEMENTARY INFORMATION:**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). According to the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries constitute the second largest source.

Incidental capture of sea turtles by trawlers in the summer flounder fishery has been well documented in the waters off North Carolina and southern Virginia in recent years. Mortality of sea turtles was attributed to the summer flounder fishery from strong circumstantial evidence that when turtles and trawling activities co-occur in the fall and winter, the number of stranded turtles increased from levels when there is no trawling. Since 1990, the responsibility of the fishery for turtle mortality has been documented through observers onboard summer flounder trawlers and extensive monitoring of fishing activity and sea turtle distribution.

NMFS conducted a consultation under section 7 of the ESA regarding the implementation of the summer flounder fishery management plan (FMP) and a biological opinion, issued August 2, 1988, concluded that sea turtles were taken off North Carolina and southern Virginia, but their continued existence was not jeopardized by the fishing activities. The biological opinion specified that all captures of all species of sea turtles in the fishery be documented.

The fishery continued without restriction and, in the 1990-1991 (late fall and early winter) season, a total of 75 sea turtles, including nine highly endangered Kemp's ridleys (*Lepidochelys kempi*), were found stranded (dead and washed up on the beach) in North Carolina. In response to the strandings, the North Carolina Division of Marine Fisheries (NCDMF) closed a portion of State waters between Cape Hatteras and Ocracoke Inlet to summer flounder trawling on December 7, 1990. During the North Carolina closure period, NMFS and the NCDMF tested experimental TEDs for use by summer flounder trawlers. North Carolina reopened its waters to trawlers using TEDs on December 26, 1990, and lifted all restrictions on January 16, 1991, when turtles were no longer encountered in North Carolina waters.

NMFS and the Mid-Atlantic Fishery Management Council reinitiated consultation under section 7 of the ESA based on new information collected during the 1990-1991 season. A biological opinion, issued on November 13, 1991, concluded that continued unrestricted operation of the summer flounder fishery in waters off North Carolina and southern Virginia would jeopardize the continued existence of the Kemp's ridley sea turtle. Reasonable and prudent alternatives to avoid jeopardy included requirements for trawlers to limit tow times to 75 minutes or not use TEDs in waters within 10 nautical miles (18.5 km) of the North Carolina and southern Virginia coast.

During the 1991-1992 season, NCDMF required, effective November 11, 1991, summer flounder trawlers to limit tow times to 75 minutes, or to use NMFS-approved TEDs, and required fishermen to take observers, if requested, to monitor the effectiveness of restricted tow times or TEDs. NMFS issued similar emergency interim regulations under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), effective December 2, 1991 (56 FR 63685; December 5, 1991). The NMFS regulations included the establishment of a monitoring program to be conducted by NMFS and NCDMF. Both NCDMF and NMFS also imposed requirements to limit tail bag mesh sizes to conserve juvenile summer flounder.

Compliance with the 1991-1992 requirement of restricted tow times in the summer flounder trawl fishery was poor, with the majority of fishermen carrying observers on their vessels regularly exceeding the 75-minute tow-time limit. According to NMFS observers, only 26 percent of trawls they observed were within the 75-minute limit. Forty-five percent were in excess of 2 hours and one haul exceeded 6 hours. Fishermen were reluctant to comply with the requirement to carry observers, thus severely limiting the monitoring of fishing activity and NMFS' ability to monitor impacts on turtles. A total of 83 turtles were observed captured, and catch rates calculated for the entire fishery were comparable to those reported for the Atlantic shrimp trawl fishery.

NMFS and NCDMF have evaluated several TED designs for use in the summer flounder fishery since December 1990 on commercial fishing vessels, and research to evaluate NMFS-approved TEDs as well as new TED designs is ongoing. Based on the results of studies of flounder behavior and fishing efficiency, NMFS has determined that the so called Super Shooter,

Anthony Weedless, and the single grate TED with flounder slots, made in compliance with 50 CFR 227.72(e) (4) and (5), are effective in protecting sea turtles and show no significant loss of flounder. Information on where TEDs are available may be requested from the Protected Species Branch, NMFS Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, Florida (813/893-3366), or the Harvesting Systems Branch, NMFS Mississippi Laboratories, 3209 Fredrick Street, P.O. Drawer 1207, Pascagoula, Mississippi, 39567, (601/762-4591).

Recent Events

As a result of the 1991-1992 summer flounder-sea turtle monitoring program, new information regarding takes of sea turtles in this fishery off North Carolina was collected and consultation under section 7 of the ESA was reinitiated in conjunction with summer flounder fishery management measures proposed in Amendment 2 to the FMP. The biological opinion resulting from this consultation, issued on August 10, 1992, concluded that the implementation of Amendment 2 required several turtle conservation actions by NMFS, including a requirement for summer flounder trawl vessels to use NMFS-certified TEDs throughout the period for which the fishery occurs off North Carolina and southern Virginia, unless specifically exempted from doing so.

Based on projected fishing effort for the 1992-1993 season and information previously discussed concerning past interactions between sea turtles and the summer flounder fishery, NMFS anticipates that future trawling activities may result in the injury or mortality of loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles.

NMFS has proposed regulations under the Magnuson Act (57 FR 24577, June 10, 1992) to require sea turtle protection measures for the summer flounder fishery in a limited area off the coast of North Carolina and southern Virginia during the fall and winter as part of Amendment 2 to the FMP. However, final implementation of Amendment 2 is pending, and NMFS is obligated, under the findings of the biological opinion for the FMP to take immediate action to protect sea turtles. A new biological opinion issued for this action confirms these findings. NMFS hereby establishes a temporary TED requirement in the trawl fishery for summer flounder.

The delay in issuing the final implementing regulations for Amendment 2 is unrelated to the turtle protection measures contained therein. Continued operation of the summer flounder fishery without conservation

measures to protect sea turtles may jeopardize the continued existence of Kemp's ridley or other species of sea turtles, and may lead to the closure of the fishery. High concentrations of sea turtles and significant summer flounder fishing effort are anticipated to co-occur off the coasts of North Carolina and southern Virginia on or about November 15, 1992. Emergency action is necessary to implement sea turtle conservation measures by that time.

Section 625.27 of the proposed regulations to implement Amendment 2 (57 FR 24577, June 10, 1992) required limited tow times with observers, and stated that additional conservation measures including the use of TEDs, may be required. It further allowed the Regional Director to impose conservation measures throughout Federal waters after consultations with the Council and relevant State marine fisheries agencies. Comments on the proposed rule were received through July 20, 1992, and are addressed in this notice. Comments include the following:

Comment: North Carolina requested that the regulations be clarified to indicate that if TEDs are required, then limited tow times would not be required.

Response: This action does not require limited tow times if a vessel is using a NMFS-approved TED.

Comment: A conservation organization strongly recommended that the final rule should include a mandatory requirement for use of TEDs from Cape Charles to the South Carolina Border.

Response: This action requires the use of TEDs in all offshore waters between 37°05' N. latitude (Cape Charles, VA) and bounded on the south by a line along 33°35' N. latitude (North Carolina-South Carolina border), which includes the area specified by the commenter. NMFS-approved TEDs are required for all vessels engaged in summer flounder fishing operations using trawl gear. NMFS may consider the use of restricted tow times instead of TEDs in the future. Any allowance for trawlers to use tow times instead of TEDs would require that the vessel operators carry a NMFS-approved observer at their own expense and limit tow times to no longer than 75 minutes, measured from the time the trawl doors enter the water until they are removed from the water.

Comment: An individual opposed the requirement that vessels must pay for observer coverage.

Response: A vessel operator must pay the salary of, and provide adequate accommodation and board for, the observer only if the vessel is exempted from the requirement to use a TED. All other observers are provided at no

salary cost through existing NMFS observer programs. However, the vessels must provide adequate accommodation and food for the observer.

The geographic range of this action, taken under the authority of the ESA, includes waters in addition to those proposed under Amendment 2 and includes state and Federal waters. Sea turtle conservation measures under Amendment 2 would be limited landward to the outer boundary of the state territorial sea and seaward to a line 7 nautical miles (12.9 km) from the shoreward boundary of the Federal exclusive economic zone. The extended area covered by this action is necessary because of the uncertainty of whether North Carolina will take final action to protect turtles in its territorial waters (bottom trawling is prohibited in Virginia territorial waters), and information gathered during the 1991-1992 season that demonstrates that turtles and trawl fishing co-occur beyond 10 nautical miles (18.5 km) during the fall and winter. This action includes waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972).

NMFS is also considering the imposition of permanent sea turtle conservation requirements for this fishery under the authority of the ESA.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that the summer flounder trawl fishery takes endangered and threatened sea turtles, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that immediate action is necessary to conserve sea turtles pursuant to interim final regulations codified at 50 CFR 227.72(e)(6)(ii) (57 FR 40861, September 8, 1992). The Assistant Administrator has determined that incidental takings of sea turtles during summer flounder fishing are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder trawl fishery managed under the FMP and Amendment 2 was issued on August 10, 1992; that incidental take statement allows for the documented lethal take of 18 sea turtles: 3 in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles.

A new biological opinion was prepared for this action. Authorization for this action differs from the August

10, 1992, authorization by including both lethal takes and takes by injury. Furthermore, while only documented takes will be calculated for vessels using TEDs, the level takings for vessels that are not using TEDs will be based on documented takes as well as estimates based on information from observers onboard fishing vessels or from other sources, such as the NMFS-NCDMF sea turtle monitoring program. Finally, if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three or more loggerhead sea turtles are lethally taken or injured during the 30-day effective period of this notice, consultation must be reinitiated.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12, as revised by the interim final regulations (57 FR 40861, September 8, 1992), are applicable to this action, as well as all relevant provisions in 50 CFR parts 217, 222, and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e) (3) or (6).

Section 227.72(b)(1) states that it is unlawful to own, operate, or be onboard a vessel, unless that vessel is in compliance with all the applicable provisions of § 227.72(e).

For purposes of this action, the term "Virginia-North Carolina restricted area" means all offshore waters, which are defined to include waters seaward of the COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), bounded on the north by a line along 37°05' N. latitude (Cape Charles, VA) and bounded on the south by a line along 33°35' N. latitude (North Carolina-South Carolina border). A "summer flounder trawl vessel" means any vessel equipped with trawl gear that targets or is capable of taking summer flounder, or any vessel possessing summer flounder that has trawl gear onboard. For the purpose of this action, trawl gear does not include fly nets.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that for a 30-day period, starting November 15, 1992, they must have an approved TED (as defined in 50 CFR 217.12) installed in each net that is rigged for fishing if the vessel is in the Virginia-North Carolina restricted area. For the purpose of this action and notwithstanding 50 CFR 227.72(e)(2)(i), a net is rigged for fishing if it is in the water or if it is shackled, tied, or otherwise connected to any trawl door or board.

The provisions of 50 CFR 227.72(e)(4) and (5), as revised by the interim final regulations (57 FR 40861, September 8, 1992), are applicable to summer flounder trawl vessels and summer flounder trawl gear as if they were shrimp trawlers or shrimp trawl gear. For purposes of this action, large mesh webbing may be attached outside of the webbing flap to prevent chaffing on downward shooting TEDs, if it does not interfere or otherwise restrict the turtle escape opening. It is the responsibility of the owner and the operator of any summer flounder trawl vessel to ensure that any sea turtle taken by that vessel is handled and resuscitated in accordance with the requirements specified under 50 CFR 227.72(e)(1) (i) and (ii).

The Assistant Administrator may grant a written waiver of the requirement for a summer flounder trawler to have a TED in its net(s) if that vessel is conducting research operations approved under 50 CFR Part 227 (for further information concerning waivers contact Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813/893-3366)). In order for this waiver to be applicable, the original of the written waiver issued by the Assistant Administrator must be carried onboard the vessel at all times that the vessel is in the Virginia-North Carolina restricted area and does not have a TED installed in each of its nets that is rigged for fishing.

The Assistant Administrator may consider the use of restricted tow times instead of TEDs in the future. Any allowance for trawlers to use tow times instead of TEDs will require that the vessel operators carry a NMFS-approved observer at their own expense and limit tow times to no longer than 75 minutes, measured from the time the trawl doors or boards enter the water until they are removed from the water.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that they must carry a NMFS-approved observer onboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel in either the NMFS or state fishing permit application, or for registration or documentation purposes, or otherwise served on the owner or operator of the vessel. A summer flounder trawl vessel must comply with the terms and conditions specified in such written notification.

A NMFS-approved observer may be required regardless of whether the vessel is fishing within the Virginia-

North Carolina restricted area and regardless of whether the summer flounder trawl vessel has TEDs installed in its nets if observer information is necessary to document interactions with sea turtles or to determine the effectiveness of conservation measures. All NMFS-approved observers will report any violations of the conservation measures required by this action, or other applicable regulations and laws; such information can be used for law enforcement purposes.

The requirements and provisions of 50 CFR 216.24 (f)(1), (f)(2), and (f)(5) through (7) applicable to vessel certificate holders under the marine mammal observer program are hereby made applicable to summer flounder trawl fishing vessels as if the observers required under this action were marine mammal observers. For example, no person may forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass an observer.

Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of the interim final regulations, codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures

The Assistant Administrator may, at any time, modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if he determines that summer flounder trawl vessels are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if the incidental take for the fishery is projected to reach the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. Additional conservation measures are likely if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three loggerhead turtles are lethally taken or injured by summer flounder trawlers subject to this notice during the 30-day effective period of this notice.

The Assistant Administrator will impose additional conservation measures on this fishery if the incidental take level is approached or exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings

of sea turtles associated with summer flounder fishing activities occur. Such additional measures may expand the restricted area or the time during which TEDs are required or impose requirements to take NMFS-approved observers at the expense of vessel owners or operators. Notification of any additional sea turtle conservation measures, including any extension of the 30-day requirement to use TEDs in summer flounder trawls, will be published in the **Federal Register**.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to protect listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a "major rule."

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds there is good cause to take this action without full notice and full public procedure thereon. The Assistant Administrator finds that full notice and full public procedure thereon is unnecessary, impracticable, and contrary to the public interest.

Advanced notice concerning the use of TEDs in part of the summer flounder fishery was provided in the Amendment 2 proposed rulemaking. The public had an opportunity to comment on the advisability of requiring the use of TEDs and the comments received were considered in this action. The co-occurrence of sea turtles and summer flounder fishing effort off North Carolina will take place on or about November 15, 1992, which makes delay for further public comment inconsistent with the need to take action to insure that the activities of the summer flounder fishery are not likely to jeopardize the continued existence of sea turtles. Delay in imposing a TED requirement is likely to result in further takings of sea turtles by the summer flounder fishery, which could result in closure of the fishery.

In addition, the Assistant Administrator has determined that good cause exists to reduce the 30-day delayed effective date otherwise required by section 553(d) of the Administrative Procedure Act. Good cause exists because of the need to protect sea turtles no later than November 15, 1992, which makes it impracticable and contrary to the public interest to delay the effective date beyond November 15, 1992. Further, the summer flounder fishery had notice on

October 1, 1992, of a prospective State of North Carolina requirement to use TEDs in North Carolina state waters to become effective on November 1, 1992, through a proclamation issued by the North Carolina Director of Marine Fisheries. Essentially, the same nets and TEDs are used in Federal and state waters. To help the fishery convert to the use of TEDs, by November 15, NMFS is sponsoring workshops in North Carolina regarding how to install, and use TEDs in flounder trawls.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule (57 FR 40861, September 8, 1992). A supplemental EA prepared specifically for this action concludes that this action will have no significant impact on the human environment and is available from NMFS (see **ADDRESSES**).

Dated: November 6, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-27413 Filed 11-6-92; 2:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 219

Thursday, November 12, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF12

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to add Otero County, Colorado, as an area of application to the El Paso, Colorado, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area. The Department of the Air Force anticipates hiring FWS NAF employees at Detachment 1, in La Junta, Colorado. Detachment 1 is located in Otero County, which is not currently defined for NAF pay-setting purposes. The purpose of this action is to assign Otero County to the proper NAF wage area for pay-setting purposes.

DATES: Comments must be received on or before Dec. 14, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts (202) 606-2848.

SUPPLEMENTARY INFORMATION: The Department of Defense notified OPM that the Department of the Air Force anticipates hiring several FWS NAF employees at Detachment 1, 1 Electronic Combat Range Group, La Junta, Colorado. Detachment 1 is located in Otero County, which is not currently defined for NAF pay-setting purposes. Air Force does not anticipate that the Detachment 1 will employ the minimum of 26 employees required to establish an FWS NAF wage area. Thus, Otero County must be defined as an area of application to an existing wage area in

accordance with the criteria in § 532.219 of title 5, Code of Federal Regulations.

Geographically, Otero County is contiguous to both Pueblo and Bent counties, which are areas of application to the El Paso wage area. Otero county is not contiguous to counties included in any other wage area. Detachment 1 in Otero County is only 88 miles from the El Paso wage area host activity, Fort Carson, versus 158 miles to the host activity of the next closest survey area, Adams-Denver, Colorado. In addition, the servicing Personnel Office for Detachment 1 will be at Peterson Air Force Base, which is located in El Paso County. Transportation facilities and commuting patterns for workers also favor definition to the El Paso wage area rather than Adams-Denver wage area. Residents do not commute from Otero County to any wage area other than the El Paso wage area.

The Federal Prevailing Rate Advisory Committee reviewed this issue and recommended, by consensus, the addition of Otero County to the El Paso, Colorado, area of application.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Douglas A. Brook,
Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C., Freedom of Information Act, Pub. L. 92-502.

2. Appendix D to subpart B is amended by revising the area of

application listing for the El Paso, Colorado, wage area to read as follows:

Appendix D to Subpart B of Part 532— Nonappropriated Fund wage and Survey Areas.

*	*	*	*	*	*
COLORADO					
*	*	*	*	*	*
EL PASO					
*	*	*	*	*	*

Area of Application. Survey Area plus:

Colorado:

Bent
Otero
Pueblo

*	*	*	*	*	*
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[FR Doc. 92-27198 Filed 11-10-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Foreign Agricultural Service (FAS) proposes to amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) to expand certain reporting requirements, to limit commissions payable in connection with ocean transportation arrangements, and to make other changes thereto.

The purpose of these changes is to eliminate certain potential conflicts of interest, keep the costs of the Public Law 480, title I program as low as possible, and insure that all persons desiring to participate in the procurement, supplying and shipping of commodities financed under Public Law 480, title I, receive fair and equitable treatment.

DATES: Written comments in duplicate should be submitted on or before December 14, 1992.

ADDRESSES: Comments should be sent to Christopher E. Goldthwait, Acting General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, room 4071, South Building, 14th and Independence, SW., Washington, DC 20250-1000.

FOR FURTHER INFORMATION CONTACT:

Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, room 4549 South Building, U.S. Department of Agriculture, 14th and Independence, SW., Washington, DC 20250-1000. Telephone: (202) 720-3664.

SUPPLEMENTARY INFORMATION: The proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "nonmajor." It has been determined that this rule will not result in an annual effect on the economy of \$100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities. A copy of this proposed rule has been submitted to the General Counsel, Small Business Administration.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. The proposed rule would have pre-emptive effect with respect to any state or local laws, regulations or policies which conflict with such provisions or would otherwise impede their full implementation. The proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may file suit in court.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are

minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992 memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Background

A final rule was published in the *Federal Register* on Dec. 13, 1991 (56 FR 64939) which adopted the interim rule published in the *Federal Register* on Feb. 1, 1991 (56 FR 3966), as subsequently corrected and revised. The interim rule amended the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) to comply with amendments made to Public Law 480 by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act).

Ocean Transportation-related Services

Generally, section 407(c)(4) of Public Law 480, as amended, precludes a shipping agent from providing, or acting as an agent of a person providing, "ocean transportation-related services" under any title of Public Law 480.

The final rule adopted as a definition of "ocean transportation-related services" the services set forth in section 407(c)(4) of Public Law 480, i.e., lightening, stevedoring, bagging or inland transportation to the destination point. The proposed rule would expand upon the scope of the services included within the present definition of "ocean transportation-related services," in § 17.5(a)(3), to include "expediting services." "Expediting services" would be defined in § 17.2(c) as services

provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel. There would be a conflict of interest if a shipping agent, representing the importer or importing country, might also provide such services to suppliers of ocean transportation at discharge ports. Such a relationship, as much as any of the currently enumerated services, could influence an agent to favor one owner over another in the vessel selection process by, for example, providing advance information concerning procurement decisions.

"Inland transportation" is one of the "ocean transportation-related services" specified in section 407(c)(4) of Public Law 480. In order to clarify the term, the proposed rule would define "inland transportation" to mean only the transportation of the commodity from the discharge port of the destination country, if the discharge port is not located in the destination country, as opposed to transportation wholly within a destination country. The purpose of the rule is to clearly encompass only the transportation required to place the commodity in the recipient country. Expanding the definition to cover commodity movements after that point could place an unnecessary burden on the importing country, which, in any event, is generally responsible for these arrangements.

Section 416(b)

Current regulations require that an agent of the importer or participant certify that the firm had not furnished ocean transportation or ocean transportation-related services for commodities provided "under any title of the Act," meaning titles I, II and III of Public Law 480, and had not served as an agent of firms furnishing such services. This reflects section 407(c)(4) of Public Law 480.

Section 1514(5)(B) of the 1990 Act amended section 416(b) of the Agricultural Act of 1949 ("section 416(b)") by providing that the provisions of section 407(c) of Public Law 480 apply to the donation of commodities under section 416(b). This is interpreted as requiring a prohibition to the effect that a person may not be a shipping agent under title I, Public Law 480 during the same fiscal year that person is engaged in providing ocean transportation or ocean transportation-related services under section 416(b), since the "provisions" of section 407(c) include, in section 407(c)(4), a limitation on the activities of shipping agents under title I. There would appear to be no reason to limit the prohibition on activities of

shipping agents solely to Public Law 480, since the same potential for conflict of interest exists if, for example, an agent represents an importing country under title I and a vessel owner under section 416(b), as would exist if that country agent represented a vessel owner under any other title of Public Law 480.

Since Food for Progress shipments hold a similar potential for conflicts of interest the proposed rule would also prohibit a title I shipping agent from providing ocean transportation or ocean transportation-related services under that program, although this is not specifically mandated by law.

Accordingly, this proposed rule would add the words "and section 416(b) of the Agricultural Act of 1949 or the Food for Progress Act of 1985" as part of the certification required by § 17.5(c)(7) of the regulations.

Affiliates

Section 17.2(c) would be amended to expand the current definition of affiliate to include instances where two legal entities are owned or controlled by the same legal entity. Currently, the definition only encompasses ownership and controlling interests directly between two legal entities. This change could have an impact on eligibility of shipping agents to participate since the definition of "affiliate" is relevant to the certification that prospective agents must submit regarding conflicts of interest.

It is believed that the current regulations should be expanded in this regard because a failure to include ownership and control by the same company within the definition of affiliated entities leaves a major area of potential conflict of interest outside of the regulatory framework intended to prevent program abuses.

Another option considered was to address this question only through specific prohibitions on certain enumerated activities between any firms, whether or not affiliated. For example, specifically prohibit the sharing of information prior to its becoming public. However, this is a cumbersome approach because it would be almost impossible to detail all the necessary prohibitions and to monitor and enforce them consistently. In addition, such activities are most likely to involve firms which are affiliates under the expanded definition.

Subcontractors of A.I.D. Freight Agents

The final rule stated that freight agents employed by the Agency for International Development under titles II and III were not eligible to act as an agent for the participant or importer

under the title I program during the period of their contract with the U.S. Government. This reflected the provision in section 407(d)(3) of Public Law 480. However, this section did not directly address subcontractors of such agents. These subcontractors have been utilized in connection with shipments under titles II and III of Public Law 480, and are actively involved in arranging ocean transportation for these programs, including obtaining offers, negotiating rates, and preparing freight contracts. USDA had initially interpreted that section as not precluding subcontractors involved in arranging shipments under titles II and III from acting as shipping agents under title I of Public Law 480. We now believe that interpretation to be erroneous based upon a clearer understanding of the nature of the shipping arrangement for donations under titles II and III.

From the date of publication of this proposed rule, section 407(d)(3) will be interpreted as including subcontractors within its scope, making subcontractors ineligible to act as a shipping agent during the period of their subcontract in order to reflect the intent of section 407(c)(3) of Public Law 480. Section 17.5(a)(4) of the regulations would be amended as shown in this proposed rule to reflect this interpretation.

No Competitive Advantage

The proposed rule (§ 17.5(a)(5)) would state that shipping agents could not give a competitive advantage to any supplier. This would insure that the shipping agent performed its duties in a fair and impartial manner and would reinforce the intent of the specific prohibitions related to conflict of interest. Violation of this requirement could be grounds for suspension or debarment from the program.

Independent Contractors

Section 17.5(c) would be amended to require that an independent contractor that may be hired by a shipping agent to perform functions of a shipping agent must furnish to the General Sales Manager the same information and documentation as the agent. This is intended to insure that the independent contractor meets the same standards as the shipping agent and that the purpose of the regulations is not avoided by the simple use of an independent contractor relationship.

Certifications by Agents

Commodity Suppliers

Currently, an agent that is nominated by a foreign country must promise that neither the agent nor any affiliate will

act as a commodity supplier or selling agent in any title I transaction with the foreign government during the term of the agency agreement. Also, as discussed above, the agent will be required to promise that neither the agent nor any affiliate will furnish ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b), or Food for Progress, or serve as an agent for such firms, during any U.S. fiscal year covered by USDA's acceptance of the nomination.

Conflicts of interest could arise if the shipping agent had on-going ties to suppliers of commodities across different programs as well as to suppliers of ocean transportation. In order to address this issue in a consistent manner, § 17.5(c)(7)(i) of the proposed rule would require agents to certify that they would not furnish commodities or act as an agent of a commodity supplier under any title of the Act, or Food for Progress (when commodities are not supplied out of CCC inventory) during the U.S. fiscal year covered by USDA's acceptance of the nomination. All commodities for the section 416(b) program are supplied from CCC inventory; commodity suppliers and their agents do not participate in that program and therefore section 416(b) is not included in the above prohibition.

Sharing Commissions

Questions have arisen over the meaning of "sharing" commissions, which is prohibited by section 407(c)(3)(B) of Public Law 480 and § 17.5(c)(7)(i)(B) and (ii)(B) of the final rule. It has been suggested that it applied only when a payment was made directly to the shipping agent, which then passed on part or all of the payment to the participant, the importer, or any agent of the participant or importer. The proposed rule would state that payment of part or all of an agent's commission by the supplier of ocean transportation directly to the participant or importer, or any other person on behalf of the participant or importer, would be considered "sharing" of the commission by the agent. This is intended as a clarification, since address commissions are already prohibited by § 17.8(c)(8).

Payment or Other Benefit

The current rule (§ 17.5(c)(8)) requires that the agent nominee certify to FAS that no payment or other benefit has been given in connection with the agent's selection. This certification is required before the agent's nomination

can be accepted by FAS to assure that foreign governments select agents on the basis of commercial considerations related to the ability of the agents. This is significant because U.S. government funds finance Public Law 480, title I commodity purchases and a portion of the freight costs on U.S.-flag vessels. The competence of the agents has a direct bearing upon these costs as well as the efficient operation of the program. The current regulation was intended to permit all persons a fair and equitable opportunity to participate in Public Law 480, title I transactions by precluding corruption in the agency selection process.

It has been suggested that there is, however, a contradiction between the agent's certification that no payment " * * * or other benefit (has been given) in connection with the person's selection as agent * * * " and the provisions in some agency agreements that provide, for example, that the agent will pay travel and lodging expenses for representatives of the importer or importing country in connection with the title I purchasing process.

Because of such provisions in agency agreements, FAS is concerned that the current regulation is too narrowly drafted to accomplish its goals. Consequently, the proposed rule (§ 17.5(c)(8)) would expand the certification requirement to prohibit anything of value being given by the agent in consideration of the appointment other than the performance of the professional services under the title I program that are the basis of the agency agreement. Examples of the types of benefits that would be prohibited in connection with the agent's selection are included in the proposed regulation.

An alternative approach would be to permit only payments which are lawful under the laws of the receiving country or which represent a reasonable expenditure for such things as travel and lodging and which are directly related to the explanation of services or the execution or performance of a contract with a foreign government. This approach would more closely reflect the provisions of the Foreign Corrupt Practices Act. However, it would tend to favor firms with more financial resources which could afford to underwrite a higher level of permitted expenditures; it would also present serious enforcement problems, including questions as to the definition of a "reasonable" expenditure. Given the large role U.S. Government funds play in the title I, Public Law 480 program, it is

important that the highest ethical standards be applied.

Limitation on Brokerage Payments

The proposed rule would add a definition of "ocean transportation brokerage" to § 17.2.(c) to mean payments to agents engaged to arrange ocean transportation and ships brokers to arrange employment of vessels. This change is consistent with current agency interpretation of the regulations and is intended only as clarification.

In the existing regulation, payments or commissions to shipping agents are not eligible for financing under title I except for ocean transportation brokerage payments which do not exceed 2.5 percent of the freight financed. Section 17.8(c) of the regulations would be revised to also specify that such payments to a shipping agent may not exceed $\frac{2}{3}$ of 2.5 percent of the ocean freight, whether or not CCC finances any portion of the ocean freight. This would leave a portion of the maximum 2.5 percent commission available for ships brokers, if used; if not, a lower ocean freight rate should result. This is a very commonly used basis for the division of brokerage commissions under commercial shipping practices. It should be noted that this regulation is not intended to establish a minimum or maximum level of commission for a ships broker.

Authority to limit shipping agents' commissions was provided to the Department under section 407(c)(3)(A) of Public Law 480. It is appropriate to propose such a reduction at this time to reflect the changes in program operations. Until the effective date of the 1990 Act, which prohibited sharing of commissions, several countries required that agents share a portion of their brokerage commissions with the participant or importer. (USDA deducted a pro rata share of this amount from the ocean freight differential reimbursed to the participant or importer). Since firms which shared commissions remained willing to serve as agent while receiving less than the maximum commission which could have been financed, it appears that that maximum may have been excessive.

In addition, § 17.5(c)(8) of this proposed rule would, as mentioned above, prohibit shipping agents from providing certain payments and benefits to the importer or participant which had been permitted in the past. This prohibition would moderate the financial effect of the new commission ceiling on shipping agents.

This proposed amendment would also lessen the possibility that an agent might discourage the use of ships

brokers in order to maximize the commission available for the shipping agent. The vessel owner should be free to determine whether or not to use a ships broker. Without the ceiling on the commission to a shipping agent, there is a potential for pressure on the owner to forego the use of an agent.

Withdrawal of USDA Acceptance

Section 17.5(d)(2) refers to USDA's acceptance of an agent's nomination as being "automatically" withdrawn under certain circumstances. Because this is not an accurate reflection of the withdrawal procedure, which would be implemented by a letter from USDA, the word "automatically" would be deleted.

Supplier Eligibility

Existing § 17.7(c)(6) provides that a commodity supplier's eligibility to participate in the title I program may be conditioned on submission of a performance security to CCC. The supplier must also comply with the standard requirement in commodity Invitations for Bids for a 5 percent performance security naming the importer as beneficiary. The regulatory requirement was designed to help insure that suppliers participating in the program fulfill their contracts with importing countries by delivering the commodity to the port of export.

It is the importing country which would bear the costs of a supplier's failure to provide the commodity. The country might be required to pay deadfreight charges on the vessel and/or secure replacement commodity at a higher price. Since these are not costs to CCC, the regulation would be amended to provide that any additional performance security required by CCC be opened on behalf of the importing country instead of CCC. This will simplify the procedure for affected suppliers, since there will be only one beneficiary of the performance bond, and should slightly lower the supplier's costs. This should encourage participation in the program and lower commodity prices.

The regulation would also reflect existing policy, under which CCC's requirement for an additional performance security may be lifted after successful performance by the supplier under one or more title I contracts.

Supplier Reporting Requirements

Specific examples would be provided as an indication of the types of payments to representative of importing countries which suppliers must report to USDA in accordance with § 17.12. For several years, this information has been

included in letters sent to suppliers reminding them of the reporting requirement. To assist suppliers in determining what payments should be reported, the requirements would also be clarified to include any payment delivered to an agent of the importing country, even though the payment is not designated for the agent. This information would help USDA identify payments which should be reported to Congress.

Contracts Required

Section 17.14(d) of the proposed rule would require that copies of all freight contracts be provided to USDA, and that CCC may request copies of contracts for lightening, stevedoring and bagging, whether or not CCC finances any portion of the ocean freight. The existing regulation requires copies of freight contracts only when CCC financing is involved and is silent regarding contracts for the other services. The Department believes that it is necessary to obtain copies of all ocean freight contracts in order to monitor more closely the new regulatory limitations on commissions to agents, the firms providing ocean transportation-related services, and the reports submitted by suppliers in accordance with the requirements of § 17.12.

Non-Reversible Laydays and Despatch

In order to make the Public Law 480, title I program more closely reflect normal commercial practice, the proposed rule would eliminate the existing requirement for reversible laydays (time lost on loading can be made up by time gained on discharging and vice versa.) This long-standing regulatory requirement, which applied when any part of the ocean freight was financed by CCC (§ 17.14(e)(5)), was designed to reduce demurrage payments by importing countries. Countries participating in the title I program generally did not possess modern discharge facilities and reversible laydays allowed the country to benefit from efficient loading in the United States. When fewer than the allotted laydays were used for loading, this increased the time which could be used for discharge before demurrage would begin to accrue.

However, it is normal commercial practice that the commodity supplier, who is responsible for loading, should benefit from completing the process in less than the allowed time. Under the proposed rule, when CCC finances any part of the ocean freight charges, the commodity supplier would share with CCC any despatch earnings at the load port. This should encourage commodity

suppliers to load more quickly. At the discharge port, despatch would be shared by the importing country and CCC, encouraging prompt discharge by the country. Demurrage would be borne in full by the importing country, as at present. It is expected that this change would result in lower freight rates because of the vessel's time saved through faster loading and discharging. Lower freight rates benefit both the importing country and CCC, which shares in despatch on a pro-rata basis reflecting the portion of the ocean freight financed by CCC.

Section 17.18(d)(6) would be amended to remove references to combined laytime statements in conjunction with this change.

The proposed rule would also delete the possibility that despatch may be credited against elevator or terminal overtime at loading port (§ 17.14(m)). It is normally in the interest of the supplier of ocean transportation to load as quickly as possible in order to increase the firm's revenue by maximizing the number of voyages completed. This might lead to the ocean transportation supplier's paying elevator or terminal overtime at load. If such overtime payments were deducted from the despatch earnings, then CCC and the commodity supplier, the entities which would share in any despatch at the load port under the proposed rule, would be subsidizing the unilateral decision by the supplier of ocean transportation to expedite loading.

Commodity Letters of Credit

There have been instances where suppliers of ocean transportation under the program issued a bill of lading which included a statement that there was a lien on the cargo. This arose when the vessel owner had not received an operable freight letter of credit before completion of loading. This statement is not essential to enforcing any rights suppliers of ocean transportation may have against the cargo in such circumstances. In addition, vessel owners now may claim detention if they refuse to load because they do not have an operable freight letter of credit. Adding this statement to the bill of lading as described above unfairly penalizes commodity suppliers who load the vessel in good faith and then cannot collect payment from the U.S. bank because the bill of lading contains the statement. If this became common practice, it would raise commodity costs under the program because commodity suppliers would increase their offer price to cover interest lost due to delayed payment. It is not unusual for commodities loaded on a vessel to be

worth several million dollars; daily interest on that sum is not inconsequential.

The proposed rule would require that commodity letters of credit must allow payment to commodity suppliers even if the bill of lading contains a statement that the vessel has placed a lien on the cargo because there was not an operable freight letter of credit at the time of loading.

Recordkeeping Requirements

Recordkeeping requirements in § 17.22 would be expanded to cover agents of the participant or importer, whether or not CCC finances any portion of the ocean freight, in order to insure that all phases of title I transactions can be examined if needed. Authorized representatives of the "U.S. Government" would be permitted access, to make it clear that personnel from the General Accounting Office are included. The regulation formerly referred only to representatives of USDA. In addition, subparagraph (b) would be added to make it clear that records covering ocean transportation-related services, as defined in § 17.5(a)(3), must be made available if such services are included in the ocean freight contract as being for the account of the vessel owner.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title

Information to be furnished by agents of the importer or importing country and suppliers of ocean transportation; recordkeeping required of agents of the importer or importing country.

Description

To reduce the possibility of conflicts of interest under the Public Law 480, title I program, additional information would be required from suppliers and from firms nominated as shipping agents to assist the importer or importing country to procure ocean transportation

under the Public Law 480, title I program. The proposal would expand two recordkeeping/reporting requirements and one recordkeeping requirement. It would not increase the burden hours from the level currently

approved. The currently approved OMB level appears in the table below. The proposed rule would increase the burden only slightly over the level currently approved.

The OMB control number assigned to the existing reporting and recordkeeping requirements of these regulations, 7 CFR part 17, is 0551-0005, which expires Aug. 31, 1995.

ANNUAL REPORTING AND RECORDKEEPING BURDEN:

Section	Annual number of respondents	Annual frequency	Burden per response	Annual burden hours
7 CFR 17.5(c)				
Existing	16	N/A	1 1/4 hr.	20
Incl. proposed rule	16	N/A	1 1/2 hr.	27
7 CFR 17.12				
Existing	21	N/A	1/4 hr.	7 1/4
Incl. proposed rule	21	N/A	1/4 hr.	7 1/4
7 CFR 17.22				
Existing	49	N/A	8 hr.	392
Incl. proposed rule	59	N/A	8 hr.	472

Total Existing Burden Hours = 419 1/4.
Total Burden Hours (Incl. Proposed Rule) = 506 1/4.
Total Difference = +87.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FAS has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Acting General Sales Manager, FAS, USDA, at the address above, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Foreign Agricultural Service.

List of Subjects in 7 CFR Part 17

Agricultural commodities; exports; finance; maritime carriers.

Accordingly, 7 CFR part 17, subpart A, is amended as follows:

1. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 1701-1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

2. Section 17.2 is amended by revising the first sentence in the definition of "Affiliate and associated company" and by adding to paragraph (c) definitions of "expediting services" and "ocean transportation brokerage" to read as follows:

§ 17.2 Definition of terms.

* * * * *

(c) Other terms.

Affiliate and associated company mean any legal entity which owns or controls, or is owned or controlled by,

another legal entity; or legal entities owned or controlled by the same legal entity. * * *

* * * * *

Expediting services means services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

* * * * *

Ocean transportation brokerage means services provided by agents of the importer or participant related to their engagement to arrange ocean transportation and by ships brokers related to their engagement to arrange employment of vessels.

* * * * *

3. Section 17.5 is amended by revising paragraphs (a)(3) and (4), adding a new paragraph (a)(5), revising paragraphs (b)(2) and (3) and (c), introductory text, (c)(7) and (8), and revising the last sentence of paragraph (d)(2) to read as follows:

§ 17.5 Agents of the participant or importer.

(a) General. * * *

(3) For the purposes of this section, "ocean transportation-related services" means furnishing the following services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985: Lightening, stevedoring, and bagging (whether these services are performed at load or discharge), expediting services, and inland transportation, i.e., transportation

from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

(4) Freight agents employed by the Agency for International Development under titles II and III are not eligible to act as an agent for the participant or importer during the period of their contract with the U.S. Government. Subcontractors of such freight agents are not eligible to act as an agent for the participant or importer during the period of their subcontract.

(5) A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments and selective enforcement of IFB or contract requirements.

(b) "Affiliate" defined. * * *

* * * * *

(2) There is any investment by approved commodity suppliers, selling agents, or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or by agents, brokers, consultants or other representatives of such persons; or their officers or directors, in the agent of the participant or importer.

(3) There is any investment by the agent of the participant or importer, or its officers or directors, in approved

commodity suppliers; selling agents; or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or its agents, brokers, consultants or other representatives of such persons.

(c) *Information to be furnished.* A person whose nomination has been submitted to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Assistant General Sales Manager the following information or documentation as may be applicable:

(7) For USDA acceptance of a nomination covering services provided on or after (effective date of this regulation) for U.S. fiscal year 1992, and each U.S. fiscal year thereafter, a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government; and the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether or not CCC finances any part of the ocean freight. This prohibition also covers a situation where the agent would forego part or all of the commission on certain types of vessels, such as U.S.-flag or non-U.S. flag vessels, with part or all of the

commission on such vessels to be paid by the supplier of ocean transportation directly to the participant, the importer, or any other person on behalf of the participant or the importer. (See also § 17.8(c)(8), which prohibits address commissions or payments);

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment or other benefit in connection with the person's selection as agent of the participant or importer other than the performance of the professional services under the title I program that are the basis of the agency agreement. This prohibition is deemed to include, but not limited to, giving to the importer or any agent, broker, or other representative of the importing country, office space or equipment (including telex machines and telex lines) at no cost or below market rates; providing training other than on an incidental basis) for representatives of the importer or importing country; providing at less than market rates goods or services in the importing country such as storage, fumigation, bags, labor, or transportation; and paying travel, meals, lodging or related expenses for the importer or any agent, broker, of other representative or the importing country.

(d) *USDA acceptance.* * * *

(2) * * * Such acceptance will be withdrawn if the agent of the participant or importer, or any of the affiliates of such agent, violates the written statement in paragraph (c)(7) of this section.

4. Section 17.7 is amended by adding at the end of paragraph (c)(6) the following:

§ 17.7 Eligibility of suppliers and selling agents.

(c) *Commodity suppliers (approval).*

(6) * * * Such performance security shall be in addition to the amount of the standard performance security required of all offerors in the Invitation for Bids. This additional performance security shall conform to the requirements in the Invitation for Bids for the performance security, and they may be combined in a single performance security. Upon

successful completion of one or more contracts by the supplier, CCC may remove the requirement for the additional performance security.

5. Section 17.8 is amended by revising paragraph (c)(3) to read as follows:

§ 17.8 Fees, discounts, commissions, payments, brand names.

(c) *Commission, fees and payments.*

(3)(i) A payment made to any agent, broker, consultant or other representative of the participant or importer is not eligible for financing, except for ocean transportation brokerage commissions which do not exceed $\frac{2}{3}$ of 2½ percent of the total ocean freight, when any part of the ocean freight is financed by CCC.

(ii) Whether or not any part of the ocean freight is financed by CCC, ocean transportation brokerage payments to any agent, broker, consultant or other representative of the participant or importer (hereafter "agent") may not exceed $\frac{2}{3}$ of 2½ percent of the total ocean freight.

6. Section 17.12 is amended by revising paragraph (a) to read as follows:

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential is financed by CCC with respect thereto, shall report to the General Sales Manager any commission, fee or other compensation of any kind (hereinafter referred to as "payment") which, in connection with the supplying of such commodities or vessels, is paid or to be paid by the supplier to any agent, broker, consultant or other representative of the importer or participant, including a corporation owned or controlled by the importer or participant, to which the supplier furnishes such commodities or vessels. This includes, but is not limited to, payments to such entities for services such as lightening, stevedoring, discharging, and bagging if such services are included in the ocean freight contract as being for the account of the vessel owner; freight commissions; address commissions; bank commissions; inward freight commissions; agency fees; consular fees;

stevedoring overtime; brokerage fees; despatcher's fees; outport agent's services; freight forwarding fees; supervision fees and payments for expediting services.

(3) Any such payment delivered to an agent, broker, or other representative of the importer or importing country must be reported, even if the payment is not designated for the agent.

7. Section 17.14 is amended by revising the introductory text in paragraphs (d) and (e), removing paragraph (e)(5) and redesignating existing paragraph (e)(6) as (e)(5), changing "combined laytime statements" to "laytime statements" in paragraph (j)(8) and revising paragraph (j)(9) and paragraph (m) to read as follows:

§ 17.14 Ocean transportation.

(d) Advice of vessel approval.

Approvals of charters and liner bookings will be given on Form CCC-106, Advice of Vessel Approval. The Form CCC-106 will state whether the vessel is approved as a dry cargo liner, dry bulk carrier, or tanker, and whether or not financing by CCC of any part of the ocean freight is authorized. Whether or not CCC finances any portion of the ocean freight, a copy of the charter party or liner booking note shall be forwarded immediately after its execution to the Director, Public Law 480 Operations Division, FAS (or the Director, Kansas City ASCS Commodity Office, for cotton), for review and approval prior to issuance of Form CCC-106-2. CCC may also request copies of lightening, stevedoring, and bagging contracts whether or not CCC finances any portion of the ocean freight. Form CCC-106, Advice of Vessel Approval, will be issued as follows:

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.* In the event of any conflict between the provisions of the regulations in this subpart and the charter party or ocean bills of lading issued pursuant thereto, the provisions of the regulations in this subpart shall prevail. The charter party shall contain or, for the purposes of financing pursuant to the regulations in this subpart, be deemed to contain the following provisions:

(j) *Items not eligible for CCC financing.*

(9) Total brokerage commissions in excess of 2½ percent of the freight and brokerage commissions to a shipping

agent in excess of ¾ of 2½ percent of the freight;

(m) *Demurrage/Despatch.* Demurrage will not be financed by CCC. Despatch at load port shall be divided between the commodity supplier and CCC; CCC shall receive a pro-rata share of despatch based on the percentage of the freight financed by CCC. Despatch at discharge port shall be divided between the participant and CCC, in proportion to the freight financed respectively by the participant and CCC. CCC's portion of despatch shall be deducted from the amount of the final request for reimbursement.

8. Section 17.15 is amended by revising the first sentence of paragraph (h)(1) to read as follows:

§ 17.15 Letter of commitment method of financing.

(h) Issuance of letters of credit.

(1) *General.* The application or request for, and any agreement relating to, any letter of credit issued, confirmed, or advised in connection with a letter of commitment to a banking institution, may contain such provisions as the approved applicant and the banking institution may agree on, and the approved applicant and the banking institution may agree to any extension of the life of, or any other modification of, or variation from, the provisions of any such letter of credit: *Provided*, That such provisions and any such extension, modification or variance shall be in no respect inconsistent with or contrary to the provisions of the letter of commitment; in the event of any such inconsistency or conflict, the provisions of the letter of commitment shall prevail with respect to CCC financing: *And provided further*, That when a letter of credit provides for acceptance of time drafts, such letter of credit (or application therefor) shall specify that the discount and acceptance fees shall be for the account of the importer: *And provided further*, That commodity letters of credit must allow payment to the commodity supplier even if the bill of lading states that the vessel owner has placed a lien on the cargo because there was not an operable freight letter of credit at the time of loading.

9. Section 17.18 is amended by revising paragraph (d)(6)(iii) to read as follows:

§ 17.18 Documentation.

(d) *Documents required for reimbursement of ocean freight financed separately from commodity price.*

(6) (iii) (A) A copy of the statement of fact and the laytime statement covering loading signed by the ship's master or owner and the commodity supplier. Agents' signatures are acceptable; and

(B) A copy of the statement of fact and the laytime statement covering discharge signed by the ship's master or owner and the charterer or consignee. Agents' signatures are acceptable. However, if 60 calendar days have elapsed since completion of discharge, as shown by the statement of fact, signature by the charterer or consignee or their agents is not required as long as the documents are accompanied by a statement signed by the supplier of ocean transportation certifying that the supplier submitted the statement of fact and laytime statement covering discharge to the charterer for review (by means such as commercial courier or express mail, if available) at least 30 days prior to the request for payment and that the supplier has notified the charterer of the request for payment on this basis. If the charterer has advised the supplier in writing of any disputed amount of despatch, a copy of this advice must be included in the request for payment and, in such case, only the portion of the 5 percent which is not in dispute is eligible for reimbursement.

10. Section 17.22 is revised to read as follows:

§ 17.22 Recordkeeping and access to records.

(a) Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including records of all payments by suppliers to representatives of the importer or participant, whether or not CCC finances any part of the ocean freight. The firm shall permit authorized representatives of the U.S. Government to have access to its premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. The firm shall retain such records until the expiration of three years after final payment under such contracts.

(b) Such records shall include those for ocean transportation-related services as defined in § 17.5(a)(3).

§ 17.23 [Removed]

11. Section 17.23 is removed.

Signed at Washington, DC, on August 25, 1992.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 92-27251 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-140-AD]

Airworthiness Directives; British Aerospace Model HS 125-700A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model HS 125-700A series airplanes. This proposal would require a one-time visual inspection of both upper wing skins for corrosion, and repair of corroded parts; and submission of an inspection report. This proposal is prompted by reports of corrosion on the left and right wing top skins under the boundary layer fence. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings.

DATES: Comments must be received by January 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-140-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-140-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-140-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion:

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model HS 125-700A series airplanes. The CAA advises that cases have been reported of corrosion on the left and right wing top skins under the boundary layer fence on Model HS 125-700A series airplanes. This condition, if not corrected, could result in reduced structural integrity of the wings.

British Aerospace has issued Service Bulletin SB 57-73, Revision 1, dated May 29, 1992, which describes procedures for a one-time visual inspection of both upper wing skins for corrosion, and

repair of corroded parts. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of both upper wing skins for corrosion, and repair of corroded parts. The actions would be required to be accomplished in accordance with the service bulletin described previously. Additionally, operators would be required to submit a report to British Aerospace of the results of their inspection findings.

The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$19,360, or \$110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-140-AD.

Applicability: All Model HS 125-700A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 6 months after the effective date of this AD, visually inspect left and right wing upper skins for corrosion beneath the boundary layer fence, in accordance with British Aerospace Service Bulletin SB 57-73, Revision 1, dated May 29, 1992.

(1) If any corroded parts are found in which the corrosion is within the limits described in British Aerospace Service Bulletin SB 57-73, Revision 1, dated May 29, 1992, prior to further flight, repair in accordance with that service bulletin.

(2) If any corroded parts are found in which the corrosion exceeds the limits described in British Aerospace Service Bulletin SB 57-73, Revision 1, dated May 29, 1992, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of inspection findings to British Aerospace, in accordance with Appendix A of British Aerospace Service Bulletin SB 57-73, Revision 1, dated May 29, 1992. Report all findings, including nil defects to: Service Support Manager, BAe 125, Corporate Jets Limited (H121), Customer Support Department, Comet Way, Hatfield, Hertfordshire, AL10 9TL, England; fax 0707 253959 or 252367; telex 21429 (BAA HPS-G). Information collection requirements contained in this regulation have been

approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 4, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service
[FR Doc. 92-27418 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-188-AD]

Airworthiness Directives; British Aerospace Model BH/DH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BH/DH/HS/BAe 125 series airplanes, that currently requires repetitive inspections of certain battery supply cables to detect chafing and local damage, and replacement, if necessary. This action would add a modification of the wiring installation at Panel ZL, which, if accomplished, would constitute terminating action for the repetitive inspections. This proposal is prompted by the development of a modification that will reduce the possibility of battery wire chafing damage at Panel ZL. The actions specified by the proposed AD are intended to prevent a circuit from overheating and resulting in a fire.

DATES: Comments must be received by January 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-188-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-188-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-188-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion:

On June 12, 1987, the FAA issued AD 87-12-08, Amendment 39-5652 (52 FR 23427, June 22, 1987), to require repetitive inspections of certain battery supply cables to detect chafing and local damage, and replacement, if necessary. That action was prompted by reports of a circuit overheating and damage to Panel ZL. The requirements of that AD are intended to prevent a circuit from overheating and resulting in a fire.

Since the issuance of that AD, the manufacturer has developed a modification which, when installed, eliminates the need for repetitive inspections of the battery supply cables.

British Aerospace has issued Service Bulletin SB.24-261-3204 A&B, Revision 1, dated March 24, 1988, which describes procedures for modifying the wiring installation at Panel ZL (Modification No. 253204 A or B). This modification involves installing new wires and rerouting the existing wires at Panel ZL. Accomplishment of this modification will reduce the possibility of battery wire chafing damage at Panel ZL. The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has not classified this service bulletin as mandatory.

British Aerospace has also issued Alert Service Bulletin S.B. 24-A261, Revision 1, dated August 17, 1987, which describes procedures for repetitive inspections of certain battery supply cables to detect chafing and local damage, and replacement, if necessary, until modification of the wiring installation at Panel ZL is accomplished. (The original issue of this service bulletin was referenced in AD 87-12-08 as the source of service information for the required inspection procedures.) The CAA classified this revised service bulletin as mandatory.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 87-12-08 to continue to require repetitive inspections of certain battery supply cables to detect chafing and local damage, and replacement, if necessary. The proposed AD would also add a modification, which, if accomplished, would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 416 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$22,880, or \$55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an operator elect to accomplish the optional terminating modification, it would take approximately 2 work hours per airplane at an average labor rate of \$55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost to accomplish the modification is estimated to be \$110 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-5652 (52 FR 23427, June 22, 1987), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 92-NM-188-AD. Supersedes AD 87-12-08, Amendment 39-5652.

Applicability: Model BH/DH/HS/BAe 125 series airplanes; as listed in British Aerospace Alert Service Bulletin S.B. 24-A261, Revision 1, dated August 17, 1987; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (a) and (b) of this AD restate the requirements of AD 87-12-08, Amendment 39-5652, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 87-12-08 have been accomplished previously, paragraph (a) of this AD does not require that the initial inspection be repeated.

To prevent a circuit from overheating and a resultant fire, accomplish the following:

(a) Within 10 days after July 7, 1987 (the effective date of AD 87-12-08, Amendment 39-5652): Inspect the battery cables to detect chafing and local damage, in accordance with British Aerospace Telex Alert Service Bulletin S.B. 24-A261, dated March 6, 1987; or British Aerospace Alert Service Bulletin S.B. 24-A261, dated March 9, 1987, or Revision 1, dated August 17, 1987. If chafing or damage is found, prior to further flight, replace the affected cable, in accordance with the applicable service bulletin.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed one year, and, if chafing or damage is found, replace the affected cable prior to further flight.

(c) Modification of the wiring installation at Panel ZL (Modification No. 253204 A or B), in accordance with British Aerospace Service Bulletin SB.24-261-3204 A&B, Revision 1, dated March 24, 1988, constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager. Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 5, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 92-27417 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing rules to amend its rules which exempt from CFTC regulation certain "hybrid" instruments that combine characteristics of commodity option contracts with debt, preferred equity or depository interests. Through the proposed rules specified in this document, the Commission would refashion the exemption to encompass those categories of hybrid instruments containing features similar to those of either commodity futures or commodity option contracts, or both but that are predominantly securities or depository instruments.

DATES: Written comments must be received by the Commission by the close of business on December 14, 1992.

ADDRESSES: Comments should be sent to Jean Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to "Regulation of Hybrid Instruments."

FOR FURTHER INFORMATION CONTACT: Gregory Kuserk, Industry Economist, or Barry Schachter, Financial Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581. Telephone: (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. 1 *et seq.*, grants the Commission exclusive jurisdiction over accounts, agreements (including any transaction which is of the character of or is commonly known to the trade as, an option, and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market or any other board of trade, exchange, or market, 7 U.S.C. 2. Section 4c of the Act generally only permits the trading of commodity options subject to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of commodity options under such terms and conditions as the Commission may prescribe, 7 U.S.C. 6c(b), 6c(c). The CEA requires that transactions in commodity futures contracts occur on or subject to the rules of contract markets designated by the Commission, 7 U.S.C. 4(a).

Section 502 of the Futures Trading Practices Act of 1992 ("1992 Act") amends Section 4(a) of the CEA and adds section 4(c)(1) which authorizes the Commission to exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provisions of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.¹ New section 4(c)(2) provides that the Commission may not grant an exemption from the section 4(a) exchange trading requirement unless the Commission determines that the agreement, contract or transaction in question will not have a material adverse affect on the ability of the

Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. More specifically, under new section 4(c)(5)(A) of the Act, the Commission is authorized to move promptly to exercise the exemptive authority granted under paragraph (1) with respect to classes of hybrid instruments that are predominantly securities or depository instruments, to the extent that such instruments may be regarded as subject to the provisions of this Act.²

In giving the Commission the authority to exempt hybrid and other instruments from Commission regulation, the Act also places restrictions on persons who may be deemed eligible to enter into such instruments. New section 4(c)(2)(B)(i) of the 1992 Act states that the Commission shall not grant any exemption unless the Commission determines that the agreement, contract, or transaction—(i) will be entered into solely between appropriate persons; and (ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act. A list of "appropriate persons" is provided in new section 4(c)(3). In addition to persons enumerated in 4(c)(3)(A)–(J), section 4(c)(3)(K) specifies that appropriate persons may be such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

The Commission believes the proposed exemption for hybrid instruments would be consistent with the public interest and the purposes of the Act. Further, it believes that the proposed exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. The Commission invites comments specifically addressed to these issues as well as comments on the antitrust considerations this proposal may raise under section 15 of the Act.

In explaining this exemptive authority, the Congress recognized the need to create legal certainty for existing categories of instruments which trade

¹ The Commission notes that in enacting the limitation regarding section 2(a)(1)(B) of the Act, Congress did not intend to call into question the legality of securities-based swap or other transactions which occur in the private marketplace at the present time that do not violate the Accord. H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Commission shares this view.

² The exercise of exemptive authority by the Commission does not require any determination that the agreement, instrument or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83.

outside of designated contract markets. In this regard, Congress noted that these instruments may contain some features similar to regulated exchanged-traded products, but are sufficiently different with respect to purpose, function, design or other characteristics that, as a matter of policy, futures regulation, including the limitation of trading on or subject to the rules of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce.³

B. Regulatory History

In 1989, the Commission exempted from Commission regulation certain hybrid instruments that combine the characteristics of commodity option contracts with debt, preferred equity or depository instruments.⁴ The Commission also recognized an exclusion from Commission regulation for certain hybrid instruments that combine the characteristics of option or futures contracts with those of debt, preferred equity or depository instruments.⁵ Under the exemption and exclusion, discussed below, the Commission applies two different sets of criteria to determine to what extent the commodity-dependent or commodity-independent component of the instrument dominates the other. While the exemption explicitly compares the values of the commodity-dependent and commodity-independent component to establish dominance, the exclusion limits the commodity-dependent component by restricting leverage in the component and requiring a sufficient yield in the commodity-independent component relative to that which the issuer would pay on a comparable non-hybrid instrument. Based on the authority of new section 4(c)(5) of the Act, the Commission is now proposing to establish a single test for exempting instruments with options or futures interests or both from requirements of the Act.

1. Hybrid Option Rule

On July 21, 1989, pursuant to its plenary authority under section 4(c)(b) governing commodity options, the Commission promulgated regulations concerning certain hybrid instruments with commodity option components.⁶

Commission Rule 34.2, (17 CFR 34.2) exempts from CFTC regulation certain hybrid instruments that combine characteristics of commodity option contracts with debt, preferred equity or depository instruments and meet other specifications in the rule. In particular, the rule exempts from Commission regulation those instruments having a limited commodity-based component when compared to the non-commodity component of the instrument. In addition, the instrument must not be marketed as a futures contract or a commodity option or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or commodity option.

This rule applies only to hybrid instruments possessing option-like components. The value of the commodity based component of the instrument is measured by the value of the implied option premium. Under the test, hybrid instruments whose implied option premium is less than 40% of the issue price of the instrument and that meet the other criteria of the rule are exempt from Commission regulation.

These proposed rules, if enacted, are not intended to affect existing instruments issued pursuant to the provisions of part 34 but will supersede part 34 as to all other offerings.

2. Statutory Interpretation

In addition to the above rule exempting certain hybrid instruments, the Commission issued a Statutory Interpretation recognizing an exclusion from regulation under the Act and Commission regulations for these categories of hybrid instruments with components that exhibit characteristics similar to those of futures contracts or commodity options with criteria specified therein.⁷ These instruments combine debt, preferred equity or depository instruments with commodity dependent components. Treatment under the interpretation is limited to such hybrid instruments that are bona fide debt, preferred equity or depository instruments and that: (1) Are indexed to a commodity on no greater than a one-to-one basis; (2) limit the maximum loss on the instrument; (3) have a significant commodity-independent yield; (4) do not have a commodity component that is severable from the debt, preferred equity or depository instrument; (5) do not call for delivery of a commodity by means of an instrument specified in the

rules of a designated contract market; and (6) are not marketed as being or having the characteristics of a futures contract or commodity option.

The existing statutory interpretation would not be vitiated by the proposed rule. Accordingly, issuers may continue to rely upon the previous statutory interpretation.

II. The Proposed Predominant Purpose Test

A. Rationale for the Predominant Purpose Test

As noted above, hybrid instruments are financial instruments that combine the characteristics of a futures or an option contract with a financial interest that does not result from the indexing to, or calculation by reference to, the price of a commodity.⁸ Such hybrid

³ The commodity-independent component of a hybrid instrument must be a debt, depository instrument or preferred equity, as specified in the rule. As discussed in the Commission's Statutory Interpretation Concerning Certain Hybrid Instruments, the Commission is of the view that, in general, non-transferable life insurance contracts, annuities or pensions that are indexed to a commodity or group of commodities, as well as adjustable rate mortgages, employment agreements, leases and similar agreements, are beyond the purview of the CEA and Commission regulations. Further, as the Commission indicated in the Statutory Interpretation, floating interest rate lending and deposit instruments are not generally subject to the Act even though payments under such instruments, by their nature, incorporate interest rate risk shifting characteristics. See 55 FR 13587, footnote 32. Accordingly, the Commission is of the view that any such instrument, the principal on which is returned upon maturity or redemption and in which the interest payment in any period is determined solely by reference to interest rates (or indices thereof), or relationships between a constant or one or more interest rates (or indices thereof)—regardless of the character of the formula or calculation used to determine the interest payment—is beyond the purview of the Act. To the extent that the principal on any such instrument is indexed to the value of a commodity, that indexation would be subject to analysis under this proposal.

Spot translations from one currency into another would not be deemed to be commodity dependent. For example, a coupon bond which was issued for U.S. dollars, but which paid coupons in dollars indexed to a German bond rate based on the Deutsche mark equivalent of the dollar principal, would not be deemed to be commodity dependent. Such transactions instead represent the economic equivalent of spot transactions between U.S. dollars and Deutsche marks. See also, e.g., CFTC Advisory No. 39-88, June 23, 1988 [Interpretative Letter No. 88-10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45-88, July 19, 1988 [Interpretative Letter No. 88-11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 48-88, July 26, 1988 [Interpretative Letter No. 88-12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate).

³ H.R. Rep. No. 978, 102d Cong., 2d Sess. 80.

⁴ Part 34 of the Commission's Regulations, 17 CFR Part 34 (Regulation of Hybrid Instruments), 54 FR 30684 (July 21, 1989).

⁵ 54 FR 1139 (January 11, 1989) and 55 FR 13582 (April 11, 1990).

⁶ 54 FR 30684 (July 21, 1989).

⁷ 54 FR 1139 (January 11, 1989).

instruments will have, more or less, the characteristics of a commodity futures or option contract, depending on the significance of the role of the commodity component.⁹ To establish the predominant character of a hybrid instrument, the Commission is proposing a test under section 4(c)(1) of the Act that measures and compares the individual components of the hybrid instrument. The test compares a measure of the commodity price exposure associated with the commodity-dependent component to the value of the commodity-independent component. Under the test, hybrid instruments would be exempt from Commission regulation if, at the time of pricing, the estimated commodity price exposure is less than the present value of the commodity-independent payments. Under the Rule, instruments having returns indexed to or calculated on the basis of the price of a commodity that are not bona fide debt, preferred equity or depository instruments will not be viewed as hybrid instruments even though they incorporate some features common to securities or depository instruments.

The exemption created by the proposed rules for qualifying hybrid instruments would be retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission Act of 1974. As a result, the exemption from the Act would be available for eligible hybrid instruments, regardless of when (subsequent to October 23, 1974) the instruments may have been entered into.

The rule also exempts, as permitted by section 4(c)(1), all persons and entities for the activity of offering, entering into, rendering advice or rendering other services with respect to hybrid instruments covered by the rule. Such persons, however, engaged in activity otherwise subject to the Act would not be exempt from such activity, even if it were connected to their exempted hybrids activity. In this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting or other requirements imposed on any person in connection with their activities that remain subject to

regulation under the Act. Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any hybrid instrument in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment, recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply to the hybrid instrument activities of their affiliated persons.

The commodity-dependent payout of any hybrid instrument can be decomposed into a combination of option payouts. In the simplest case, the commodity-dependent payout which is option-like can be viewed as a long or short, put or call. Somewhat more complicated is a futures-like payout, which can be decomposed into either a long call and short put having identical strike prices, in the case of a long futures position, or a long put and a short call, in the case of a short futures position.¹⁰ Finally, a number of option payouts may be combined to achieve more complex commodity-dependent payouts.¹¹

A goal of the predominate purpose test is to provide regulatory consistency and afford flexibility to the issuers of hybrid instruments when structuring a specific instrument. As noted above, a hybrid instrument may contain a commodity-dependent payment which can be viewed as a combination of basic option positions. By treating the commodity-dependent component of a hybrid instrument as a combination of elemental option positions, a single and consistent test across hybrid instrument types is achieved.

B. Structure of the Predominant Purpose Test

For an instrument to receive an exemption from Commission regulation, the proposed test requires that the present value of the commodity-independent payments be greater than the measure of the commodity-dependent price exposure associated with the instrument. This price exposure is measured by summing and/or netting

the elemental options in the manner described below.¹²

Because a given commodity payout may be replicated in a variety of ways, the Commission realizes that a uniform method of replication must be used so that the test is applied in a meaningful way. The Commission proposes that a reference strike price be established from which the component options that replicate a given commodity-dependent payout as established. The reference strike price will be defined as the price nearest the current spot or forward price of the underlying commodity, whichever is used to price the instrument, at which the commodity-dependent payment becomes non-zero, or in the case where two potential reference prices exist, the price that results in the highest measure of commodity price exposure. For purposes of the predominant purpose test, all option positions with strike prices above the reference strike price must be of the nature of a call option, and those below must be of the nature of put options.

The three figures below illustrate the selection process for the reference strike price and decomposition of the commodity payout. Figure 1 shows the case where the commodity-dependent payment is option-like in the area of the current forward price of the underlying commodity. The commodity-dependent payment is indicated by the hatched lines. The payments attributable to individual options used to replicate the overall commodity-dependent payment are indicated by the solid arrowed lines. At the current price, this instrument exhibits the characteristics of a long call option. Under the definition of the reference strike price described above, one would move to the nearest point to the current price where the payout of the commodity-dependent component becomes non-zero. The price at which this occurs would then be defined as the reference strike price for a long call option which replicates the commodity-dependent payout to the point where the overall commodity-dependent payout is capped. At that point a second option, with the characteristics of a short call option, would be added to replicate the cap.

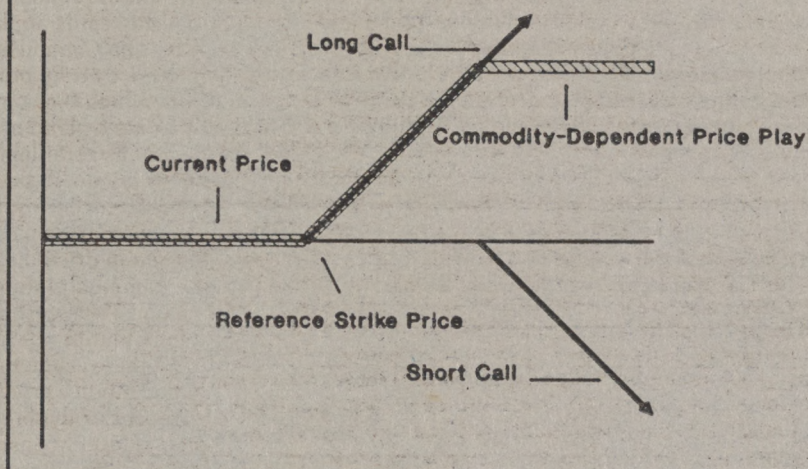
⁹ A commodity-dependent component represents an interest which is indexed to or calculated by reference to the price of a commodity. The commodity-dependent component of a hybrid instrument can be indexed to the price of a single commodity such as wheat or gold, or to a price index, a spread between prices or a basket of commodities.

¹⁰ Such combined positions are, in fact, referred to as "synthetic futures" and are often used by market professionals.

¹¹ Various combinations of option positions are referred to by market professionals as "caps," "floors," "collars," "butterfly spreads," "bull and bear spreads," "straps," "straddles," etc.

¹² For hybrid instruments that only contain an option-like component, the measure of the commodity price play will equal the value of the option component. For instruments with futures-like components, the commodity price exposure is represented by the sum of the option values, to either side of a central reference price, which replicate the futures position.

Figure 1
Commodity-Dependent Payment with an Option-Like Payment
at the Reference Strike Price.

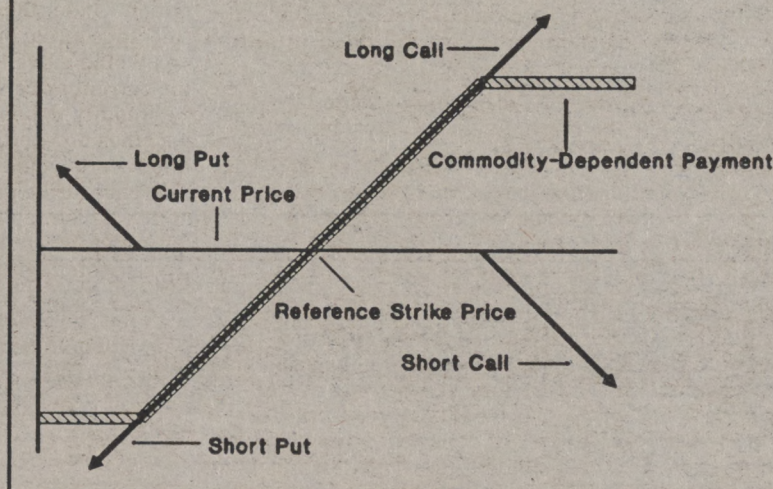


The second case shows an example of a hybrid instrument that contains a futures-like payout in the area around the current forward price. In this case the overall commodity-dependent component can be viewed as a futures contract with a cap on gains and a floor on losses. The reference price for this

instrument lies above the current price of the commodity and is at the point where the commodity-dependent payment is zero. Using this reference price, the commodity-dependent payout would be replicated with a combination of puts and calls. The futures-like payment would be replicated with an in-

the-money short put and an out-of-the-money long call. The cap on the commodity-dependent payment would be replicated through the addition of a further out-of-the-money short call, while the floor on losses would be replicated using an out-of-the-money long put.

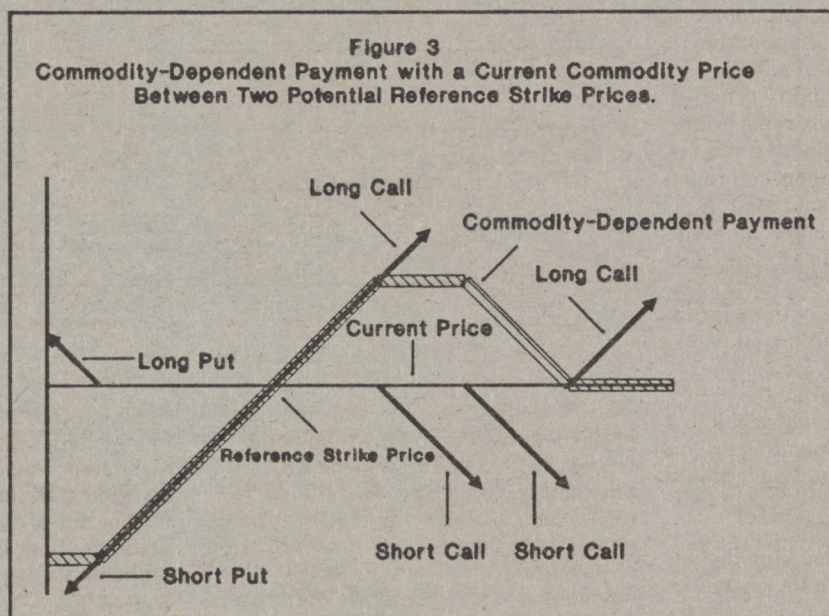
Figure 2
Commodity-Dependent Payment with a Futures-like Payment
at the Reference Strike Price.



A third example of reference strike price selection involves the case where two potential reference prices exist. Figure 3 illustrates this case. In this example a price above and one below, both equidistant from the current commodity price, are each assumed to generate a commodity-dependent payment of zero. Thus, one could choose to set the reference strike price at the higher or lower price and then identify

the appropriate combination of option contracts based on the choice that was made. For example, if the reference strike price was set at the higher price, the instrument would be replicated entirely through put options at the points where the commodity-dependent payment changes slope. Figure 3 illustrates the alternative selection where the reference strike price is set at the lower choice. In this case a synthetic

futures position is constructed at the point of the reference strike price. The commodity-dependent payment above the reference strike price is then replicated with call options, while that below is replicated with put options. For the purpose of this example, it is assumed that this composition results in the large commodity price exposure, the computation of which will be further discussed below.



The Commission believes that choosing the reference price in this manner is the most desirable since the commodity price exposure an instrument experiences is initiated from the current price of the underlying commodity. This commodity price exposure is most accurately captured by replicating the payouts near the current price using the least complicated combination of option positions—i.e. a single option—while replicating payouts further from the current price with multiple option positions. By defining the instrument in this manner, the instrument can be thought of as a combination of two hybrid instruments. One combines the commodity price exposure below the reference price with a debt, depository or preferred equity interest and the other combines the commodity price exposure above the reference price with an appropriate commodity-independent interest. For each of the instruments, the absolute net value of the option premia would be restricted to be no larger than the

present value of the commodity-independent payments. Viewed as a whole, the commodity price exposure as measured by the sum of the absolute values of the two option components would be restricted to be no larger than the present value of the commodity-independent payments.

C. Calculating the Commodity-Dependent and Commodity-Independent Components.

When issuing a financial instrument, such as a hybrid instrument, issuers must determine the value of the instrument when setting the issue price. For hybrid instruments, the overall value of the instrument derives from the values of the commodity-independent and commodity-dependent components of the instrument. As noted previously, the commodity-dependent payout of a hybrid instrument can be further viewed as a portfolio of individual options. The value of the commodity-dependent component, then, is the net value of these options.

To determine the price of individual options for the purpose of pricing an instrument, issuers rely on a variety of methods to both estimate price volatility as an input to a pricing model, and to calculate option prices.¹³ These include analytical formulas, such as those derived in the Black-Scholes model¹⁴ or numerical techniques, such as Monte Carlo simulations, for valuing recently developed types of options where analytical formulas may be impossible to obtain.

The Commission proposes that for the purpose of applying the predominant

¹³ In cases where the commodity-dependent component is calculated from an index, a spread or a basket of commodities, the measure of the commodity price exposure under the rule should be calculated by valuing the option premia directly for such an index, spread or basket, or by summing the option premia for the individual commodity components of the index, spread or basket, whichever method has been used to calculate the issue price of the instrument.

¹⁴ See, Fischer Black and Myron Scholes, "The Pricing of Options and Corporate Liabilities," *Journal of Political Economy*, pp.637-59.

purpose test, issuers use the same methods for valuing options and the volatility of prices as are used to determine the issue price of the instrument. In cases where additional inputs may be required than those needed to price the instrument, the Commission proposes that issuers be permitted to use inputs based on reasonable economic or market determinations. Using like methods assures that to the extent different pricing methods might yield different results, the use of similar methodologies to both price the issue and apply the predominant purpose test results in a fair measure of the commodity price exposure, thus allowing an appropriate evaluation of the predominant nature of the instrument. Such an approach relies on market discipline to assure that an accurate evaluation of the predominant nature of the instrument is attained. For example, if an issuer were to use an improper method to price options for the purpose of applying the proposed test, then the requirement that the same methodology be used to price the commodity component would result in a mispriced instrument. Depending on the direction of mispricing, the issuer would tend to oversell instruments priced too low or have difficulty selling instruments that were priced too high. In either case, revenues from the issuance of the instrument would not be optimal. In any event, an issuer that knowingly misprices an instrument to take advantage of the exemption, may be in violation of applicable securities or banking statutes or regulations. Moreover, issuers who lack a reasonable basis for the option pricing method selected may, in appropriate circumstances, be deemed to fall outside the scope of the exemptions.

The Commission also proposes that for the purpose of applying the predominant purpose test, issuers use the same method to calculate the present value of the commodity-dependent payments as is used to price the instrument. The rationale for this requirement is the same as for the requirement pertaining to measuring the commodity price exposure of the instrument. Since a valid application of the proposed test relies on an appropriate and accurate measure of the value of the commodity-independent component, this requirement assures that the market discipline that compels appropriate pricing, also results in a valid test.

D. Applying the Predominant Purpose Test

1. Test Application Date

The Commission recognizes that because option prices and discount rates constantly change, a date must be fixed for the application of the test. The proposed test specifies that the methods used to price the commodity-independent and commodity-dependent components of a hybrid instrument for purposes of applying the test must be the same as those that were used to determine the issue price of the instrument. To maintain consistency with this requirement, the proposed predominant purpose test requires that the application of the test be made at the time the instrument is priced. At this point in time, the relevant values of the discount rate, underlying commodity price and volatility of prices are known such that the predominant purpose test can be applied.

2. Severability

The proposed definition of a "hybrid instrument" is drafted to include debt, preferred equity and depository instruments, not otherwise excluded from the Act, having a commodity component that is linked at the time of issuance. The definition is designed to make clear that "hybrid instruments" are interests that combine option or futures characteristics with other interests. In the case where an instrument links a severable option or futures interest with other interests, the Commission proposes to reapply the predominant purpose test at the time of severance to each severed component.¹⁵ From that point in time, instruments having the predominant features of an option or futures contract, under the terms of the proposed test, would be treated as such. Instruments for which the value of the commodity-independent payment is greater than the measured commodity price exposure would continue to be exempted from Commission regulation.

3. Maturity Dates

The maturity date(s) associated with the hybrid instrument and futures and/or option components of the instrument are those date(s) on which the issuer and purchaser of the instrument settle on payment(s) of the commodity portion of the instrument. For example, if an instrument pays a commodity-linked coupon on a specified date, then that

date would be the maturity date of the option contract associated with that coupon. The maturity date of the instrument as a whole would be the date when the final obligations of the instrument are due.

4. Maximum Loss

The application of the predominant purpose test implicitly considers the variability of the commodity component of a hybrid instrument relative to its commodity-independent component. As such, the test considers the probability of a commodity-dependent loss in excess of a commodity-independent payoff. Nonetheless, it is the Commission's view that instruments which allow commodity-dependent losses to accrue in excess of the face value of the instrument are more characteristic of a commodity interest than a debt, depository or security interest. Accordingly, the Commission will require that the loss on any indexed coupon or interest payment can not exceed the commodity-independent coupon or interest payment, and the loss on the indexed face value of an instrument can not exceed the face value of the instrument.¹⁶

E. Appropriate Persons

In giving the Commission the authority to exempt certain instruments from Commission regulation under section 4(c) of the Act, restrictions were placed upon the types of persons who would be deemed "appropriate" to enter into or purchase such instruments. Section 4(c)(3)(K) of the Act specifies that appropriate persons may be such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. In the case of hybrid instruments that contain characteristics of futures or options contracts but are otherwise predominated by the debt, depository or preferred equity interest of the instrument, the Commission believes that the essential nature of the instrument is that of the debt, depository or preferred equity interest. Issuers of hybrid debt and preferred equity securities instruments would be subject to the Securities Act of 1933 and, as such, would be required either to comply with applicable registration requirements or to qualify for an exemption therefrom. Hybrid bank

¹⁵ However, options on securities, except for exempt securities, are excluded from Commission regulation. Section 2(a)(1)(B) of the CEA, 7 U.S.C. 2a.

¹⁶ In any event, the provisions of the instrument can not require the purchaser or any holder to pay additional "out-of-pocket" funds or consideration during the life of the instrument or at maturity.

offerings would be subject to the requirements imposed on the offering bank by its regulators. Thus, it is the Commission's view that appropriate persons eligible to enter into transactions for hybrid instruments are those enumerated in section 4(c)(3)(A)-(J) and those who are eligible to enter into or purchase the debt, depository or security interest which predominates in the hybrid instrument. These are a registered security within the meaning of Section 2(1) of the Securities Act of 1933, an exempt security under section 3(a)(2), 3(a)(3), 3(a)(5) or 3(a)(8) of the Securities Act of 1933, a security that is offered and sold pursuant to an exempt transaction under section 4(2) of the Securities Act of 1933, or a demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2(b)(1), c(1) and (e) respectively.

F. Examples

The application of the predominant purpose test requires the calculation of two values, the present value of the commodity-independent component and a measure of the commodity price exposure. The test compares these values to establish whether the commodity-dependent or commodity-independent component is the predominant component of the instrument. Following are several examples showing how various instruments would be evaluated under the predominant purpose test. The first example considers a hybrid instrument that combines a discount bond with indexed principal structured as a long call option. The second example expands upon this by adding a short put option so as to create a futures-like position. The third example adds a long put and short call option to the futures position to demonstrate the evaluation of an instrument that incorporates a flood and cap on the commodity-dependent payout. Finally, an example of an instrument containing indexed coupons is presented.

The commodity-independent component of the first three examples is structured as a pure discount bond. The maturity of the instrument is 5 years. At maturity the purchaser receives the return of \$1000 principal. Assuming the issuer, or a similar issuer, pays 7% per annum for a comparable non-hybrid debt instrument, the present value of the commodity-independent component is:¹⁷

$$\frac{\$1000}{(1+.07)^5} = \$712.99$$

In addition to the bond described above, the following options and premia are used to construct the examples.

5-year long call gold options:

strike price = \$480

premium = \$65.49.

5-year short put gold option:

strike price = \$480

premium = \$65.49.

5-year long put gold option:

strike price = \$146

premium = \$2.04

5-year short call gold option:

strike price = \$800

premium = \$39.89

Example 1: A Hybrid Instrument with a Long Option-like Component.

Consider the application of the predominant purpose test to a hybrid instrument that combines the debt component described below with the long call gold option with \$480 strike price. The commodity-independent component consists of the bond as represented by the return of principal at maturity. The commodity-dependent component is represented by the additional payment at maturity if the price of gold is above \$480 at that time. The current forward price of gold is \$480 and the reference strike price for purposes of applying the predominant purpose test is also \$480.

Application of the predominant purpose test to this instrument stipulates that to be exempt from Commission regulation, the present value of commodity-independent payments be larger than the commodity price exposure associated with the instrument. As noted above, the present value of the commodity-independent payments is \$712.99. Since the commodity-dependent component is structured as a simple call option, the commodity price exposure is measured by the absolute value of the option premium, which is \$65.49. Because the present value of the commodity-independent payments is larger than the commodity price exposure, this instrument would be exempt from regulation under the Act and Commission rules.

Example 2: A Hybrid Instrument with a Futures-like Component.

Now consider the application of the predominant purpose test to an instrument contains a commodity-dependent that is futures-like. This can be accomplished by adding to the instrument described in example 1, a commodity-dependent payment that has the characteristics of a short put option.

For the holder of the instrument, a loss, equal to the price of gold at maturity minus \$480, would be incurred if the price of gold was below \$480. A gain would still be realized on the commodity-dependent component if the price of gold was above \$480. The reference strike price of this instrument is \$480, as was the case in example 1. In combination with the long call option, the overall character of the commodity-dependent component is that of a long futures contract since the holder receives an additional payment if the price of gold is above \$480 and a loss if the price of gold is below \$480 at maturity.

Application of the predominant purpose test requires a comparison between the present value of the commodity-independent payments and the commodity price exposure. The present value of the commodity-independent payments for this example remains unchanged at \$712.99. The commodity price exposure of the instrument, however, has changed because of the additional exposure of the instrument to price movements below \$480. If we consider the price exposure of the instrument for price movements below \$480, it can be measured by the premium of the short put option that generates this price exposure, as was done above in the case of the long call option. The value of this premium is assumed to be \$65.49. Since the payouts of these two options do not offset each other, but instead sum to create a greater overall price exposure, the total measure of the commodity price exposure of this instrument is attained by summing the values of the two premiums, \$65.49 + \$65.49 = \$130.98. Comparing this measure to the present value of the commodity-independent payments of \$712.99, it is seen that the commodity-independent payment represents the predominant component of the instrument. Thus, this instrument would fall within the exemption for hybrid instruments.

Example 3: A Hybrid Instrument with Caps and Floors.

The nature of commodity price movements is such that the ultimate payout on a hybrid instrumentation is uncertain. To limit exposure on such payouts, issuers may place, and purchasers may demand, limits on payouts when prices move above or below certain levels. For instance, the proposed rule states that at a minimum an issuer must limit losses to the amount of principal invested in the instrument for the overall characteristic of the instrument to be consistent with that of a security or deposit. This effectively

¹⁷ For ease of exposition, the calculations of present values in the examples of this notice assume a flat yield curve. In practice, however, the Commission would accept calculations based on other appropriate yield curve assumptions.

grants the purchase an option contract with a strike price at the price level of the underlying commodity where the loss is limited. Similarly, the issuer may cap gains by packaging short option positions in the commodity component.

Consider an instrument with a commodity-dependent component that pays the difference between the price of 3 ounces of gold at maturity and \$480. In addition, the instrument caps losses on the commodity component at \$1000, makes no additional commodity payments when the price of gold reaches \$800. The reference strike price for purposes of defining the component options of this instrument is \$480.

When the profit profile is altered as described, the issuer is implicitly adding option positions to the instrument. Essentially, a long put option and short call option position have been added to the simple futures position of example 2. The commodity-dependent position has also had its commodity price exposure increased by basing the payout on 3 ounces of gold instead of 1 ounce as assumed in the first two examples.

To achieve the floor and cap described, 3 long put options with strike prices of \$146 are added, which result in a payment at maturity of approximately \$0 if the price of gold is \$146 or less. Similarly, 3 short call options with \$800 strike prices result in a cap on the maturity payment of \$1960. Thus, the overall commodity exposure on the instrument is smaller than the simple futures payout since there is no additional price exposure when gold is below \$146 or above \$800.¹⁸

Because the objective of the test is to measure the overall commodity exposure of an instrument, and since the caps on gains and losses in this instrument reduce the overall commodity price exposure, the terms of the predominant purpose test require the netting of option values on the same side of the reference strike price. In this case the long put option contracts that limit losses on the instrument must be netted against the short put option contracts which make up one side of the futures component. The value of a long put option with \$146 strike price is \$2.04. Netting the value of this option against the value of the short put option gives a

price exposure associated with price movements below \$480 of $\$65.49 - \$2.04 = \$63.45$. Since the overall position includes 3 of each option, the total price exposure is $3 \times \$63.45 = \190.35 . Likewise, the short call option contracts that limit the instrument's gains must be netted against the long call option contracts that make up the other side of the futures position. The value of a call with \$800 strike price is \$39.89, giving a measure for the price exposure of $\$65.49 - \$39.89 = \$25.60$ for price movements above \$480. Again, because the position involves 3 of each option, the total price exposure is $3 \times \$25.60 = \76.80 . The overall commodity exposure associated with this instrument is the sum of the measures of the price exposures above and below \$480. In this case the total commodity price exposure is equal to $\$190.35 + \$76.80 = \$267.15$. Since this is less than the present value of commodity-independent component, \$712.99, this instrument would be exempt from Commission regulation. If, however, the commodity-dependent payout was indexed to 9 ounces of gold, the total commodity price exposure of the instrument would be $(9 \times \$63.45) + (9 \times \$25.60) = \$801.45$. Under this modification, the instrument would not meet the predominant purpose test criteria for exemption from Commission regulation since the price exposure of the instrument is larger than the present value of the commodity-independent payments.

Example 4: A Hybrid Futures Contract With Indexed Coupons.

In addition to hybrid instruments containing a principal indexed to the price of a commodity, it is also possible to have instruments with coupon payments indexed to changes in the price of a commodity. In such cases, the hybrid instrument has associated with it a commodity position for each coupon payment.

As an example of such an instrument, consider a 5-year gold bond that returns principal of \$1000 in 5 years. Assume that at the end of each year the instrument pays a 5% coupon along with an adjustment made in accordance with the following schedule:

Year 1 Adjustment = .2 oz. \times (Gold Price—\$389)
 Year 2 Adjustment = .2 oz. \times (Gold Price—\$410)
 Year 3 Adjustment = .2 oz. \times (Gold Price—\$433)
 Year 4 Adjustment = .2 oz. \times (Gold Price—\$455)
 Year 5 Adjustment = .2 oz. \times (Gold Price—\$480)

As with the adjustment to the principal in the examples of a hybrid-futures instruments described above, each of the coupon adjustments in this example represents a futures position.

for example, if after 3 years, the price of gold is \$450, the instrument holder will receive $\$50 + .2 \times (\$450 - \$433) = \53.40 . If the price is \$400, the instrument holder receives $\$50 + .2 \times (\$400 - \$433) = \43.34 . Thus, the coupon payments are subject to upward adjustments when gold prices move above \$433 and downward adjustments when gold prices move below \$433.

The application of the predominant purpose test proceeds as with the application of the test to principal-indexed instruments. The commodity-dependent payments are first decomposed into their component option positions. In this instrument a different reference strike price exists for the futures position associated with each coupon payment. The values of these reference strike prices coincide with those prices at which the coupon adjustments equal zero. For the first coupon the reference strike price is \$389, the second \$410, the third \$433, the fourth \$455 and the fifth \$480. The option values are determined and the commodity price exposures associated with the coupon payments are calculated. These are then summed to obtain the total commodity price exposure of the instrument. The test is applied by comparing the measure of the price exposure to the present value of the commodity-independent payment. For this instrument, the value of each commodity component is the sum of the put and call values associated with each coupon payment multiplied by .2 ounces of gold.

Year 1 Price Exposure = .2 \times ($\$29.42 + \29.42) = \$11.77
 Year 2 Price Exposure = .2 \times ($\$41.56 + \41.56) = \$16.62
 Year 3 Price Exposure = .2 \times ($\$50.94 + \50.94) = \$20.38
 Year 4 Price Exposure = .2 \times ($\$58.58 + \58.58) = \$23.43
 Year 5 Price Exposure = .2 \times ($\$65.35 + \65.35) = \$26.14

The measure of the total commodity price exposure is the sum of these individual price exposures, or \$98.34.

The value of the commodity-independent component is the present value of the payment stream attributable to the bond. Since the bond in this example is a coupon bond, it is equal to the present value of the coupon payments, plus the present value of the principal repayment. Assuming that the issuer would pay 7% per annum for a conventional debt instrument of the same maturity, then the present value of the commodity-independent component is:

¹⁸ The actual reduction achieved in the overall commodity price play of the instrument will, in addition to other factors, depend on how far the strike prices of the limited options are from those of the reference strike price. As the strike prices move farther away, the related options become more out of the money, thereby giving the instrument a commodity price play over a wider set of prices. This is reflected by a larger overall commodity price play due to the smaller meeting values associated with the more out of the money options.

$$\frac{\$50}{(1.07)^1} + \frac{\$50}{(1.07)^2} + \frac{\$50}{(1.07)^3} + \frac{\$50}{(1.07)^4} + \frac{\$50}{(1.07)^5} + \frac{\$1000}{(1.07)^5} = \$918.$$

Because the measure of the commodity price exposure is less than the present value of the bond, this instrument would meet the limited commodity exposure requirement for exemption from Commission regulation.¹⁹

III. Other Matters

A. Paperwork Reduction Burden

The Paperwork Reduction Act of 1980, ("PRA"), 44 U.S.C. 3501, *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The Commission has determined that these proposed rules do not impose any information collection requirements as defined by the PRA.

Persons wishing to comment on this proposed rule should contact Gary Waxman, Office of Management and Budget, Room 3328, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission notes that the proposed rules, if adopted, are not intended to introduce any new prohibition but, rather, to provide exemptive relief from existing regulatory requirements. The adoption of these proposed rules would enable current and potential issuers of hybrid instruments to expand the line of

instruments now offered and allow issuers who issue instruments that contain option-like and futures-like components to rely on a single rule to determine regulatory jurisdiction. By providing objective standards for exemption from regulation, the proposals will relieve issuers of regulatory constraints under the CEA and Commission regulations. The Commission anticipates that the proposed rule amendments will dispel uncertainty and establish consistent regulatory requirements for various types of commodity-related hybrid instruments, and thereby facilitate novel forms of financial transactions while fulfilling the mandates of the CEA.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operation.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid Instruments.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4(a), 4(c), 4c and 8a thereof, 7 U.S.C. 2, 6(a), 6(c), 6c and 12a, the Commission hereby proposes to revise Part 34 of Title 17 of the Code of Federal Regulations as follows:

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.

34.1 Scope.

34.2 Definitions.

34.3 Hybrid instrument exemption.

Authority: 7 U.S.C. 2, 6(a), 6(c), 6c and 12a.

§ 34.1 Scope.

The provisions of this part shall apply to any hybrid instrument which may be subject to the Act, and which has been entered into on or after October 23, 1974.

§ 34.2 Definitions.

(a) *Hybrid instrument.* Hybrid instrument means, and is determined at the time of issuance or severance, a debt, preferred equity or depository instrument with a commodity-dependent component that has characteristics similar to those of commodity futures and commodity options.

(b) *Commodity-independent payment.* Commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity.

(c) *Commodity-dependent payment.* Commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to, or calculation by reference to, the price of a commodity.

(d) *Option premium.* Option premium means the value of an option having the same commodity characteristics as the referenced commodity of the hybrid instrument, and calculated using the same method as that used to determine the issue price of the instrument.

(e) *Reference Price.* Reference price means the price nearest the current spot or forward price, whichever is used to price the instrument, at which the commodity-dependent payment becomes non-zero, or, in the case where two potential reference prices exist, the price that results in the highest commodity price exposure.

§ 34.3 Hybrid instrument exemption.

(a) A hybrid instrument which may be subject to the Act is exempt from regulation under the Act, as well as any person or class of persons offering, entering into, rendering advice or rendering other services with respect to such hybrid instrument for that activity, if:

(1) The instrument is:

(i) A security within the meaning of section 2(1) of the Securities Act of 1933 which is registered in accordance with section 5 of the Securities Act of 1933;

(ii) An exempt security under section 3(a)(3) or 3(a)(8) of the Securities Act of 1933;

¹⁹ In the interest of simplicity, the instrument in this example does not contain a provision to limit the commodity-dependent losses to the size of the commodity-independent coupons. Such an instrument would not be exempt from Commission regulation without such explicit or implicit protection.

(iii) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by the United States, any territory of the United States, the District of Columbia or any state of the United States, or any political subdivision or public instrumentality thereof; or a security issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission;

(iv) An exempt security under section 3(a)(2) or 3(a)(5) of the Securities Act of 1933 that is issued or guaranteed by a financial institution that is insured by a United States Government agency or United States chartered corporation; or an exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by a United States branch or agency of a foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions;

(v) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued by an insurance company;

(vi) A security that is offered and sold pursuant to an exempt transaction under section 4(2) of the Securities Act of 1933; or

(vii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e), respectively, offered by an insured depository institution as defined in Section 3 of the Federal Deposit Insurance Act; an insured credit union as defined in Section 101 of the Federal Credit Union Act; or a Federal or State branch or agency of a foreign bank as defined in Section 1 of the International Banking Act and marketed and sold directly to a customer or through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934 and applicable regulations;

(2) When the commodity-dependent payment is decomposed into an option payout or payouts, the absolute net value of the put option positions with strike prices less than or equal to the reference price plus the absolute net value of the call option positions greater than or equal to the reference price, is less than the present value of the commodity-independent payments;

(3) The instrument provides that the loss on any indexed coupon or interest payment can not exceed the commodity-independent coupon or interest

payment, and the loss on the indexed face value of an instrument can not exceed the face value of the instrument; and

(4) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(b) The instrument is entered into solely between persons set forth in Section 4(c)(3)(A)-(J) of the Act or otherwise permitted to enter into, purchase or sell those instruments enumerated in paragraph (a)(1) of this Section.

Issued in Washington, DC, on November 5, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-27309 Filed 11-10-92; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 35

Exemption for Certain Swap Agreements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing generally to exempt swap agreements (as defined herein) meeting specified criteria from regulation under the Commodity Exchange Act. This rule is being proposed pursuant to authority recently granted to the Commission, the purpose of which is to give the Commission a means of improving the certainty of the market for swap agreements.

DATES: Written comments must be received by the Commission by the close of business on December 14, 1992.

ADDRESSES: Interested persons should submit their written views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to rules to exempt certain swap agreements.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, Pat G. Nicolette, Deputy General Counsel or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA" or "Act") grants the Commission exclusive jurisdiction over accounts, agreements (including any transaction which is of the character of . . . an "option"), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market or any other board of trade, exchange, or market. 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.¹

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law.² This legislation added new subsections (c) and (d) to Section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than Section 2(a)(1)(B).³ New Section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract or transaction will be entered into solely between appropriate persons, a term defined in

¹ Sections 4(a), 4(c)(b) and 4(c)(c) of the Act; 7 U.S.C. 6(a), 6(c)(b), 6(c)(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity. 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

² P.L. No. 102-_____

³ Section 4(c)(1) (to be codified at 7 U.S.C. 6(c)(1)) states that in order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

new Section 4(c)(3), and the Commission determines that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.⁴

Finally, new Section 4(c)(5)(B) of the Act authorizes the Commission to exercise "promptly" the exemptive authority granted in Section 4(c)(1) and to exempt swap agreements that are not part of a fungible class of agreements that are standardized as to their material economic terms to the extent that these instruments may be considered as subject to regulation under the Act.⁵

II. The Proposed Rule

The Commission's initial review of the regulatory issues raised by swap agreements resulted in the issuance in July 1989 of a Statement of Policy ("Policy Statement") concerning certain swap transactions which recognized a non-exclusive safe harbor for transactions satisfying the statement's criteria.⁶ The Commission has also recognized, as have others, that certain swap transactions may fall within the Act's jurisdictional exclusion for forward contracts, the so-called Treasury Amendment or the trade option exemption.⁷ Although the Policy

Statement provided much needed clarity at that time concerning the regulatory treatment of swaps, in enacting the 1992 Act, Congress has directed the Commission to act promptly to issue an exemption to establish legal certainty in this area.⁸ The Commission, therefore, is proposing a new part 35, which provides a safe harbor for those transactions which meet the terms and conditions set forth therein and, to the extent these transactions may be considered subject to the Act, exempts them from all provisions of the Act except section 2(a)(1)(B),⁹ and certain other non-regulatory sections of the Act which the Commission believes should continue to apply to exempted agreements.¹⁰ In exercising its new authority under section 4(c), the Commission intends to enhance the legal certainty of the market for swap agreements.¹¹ The proposed exemption is retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission Act of 1974. In this way the proposed exemption would implement Congressional intent that the exemption from the Act be available for all eligible swap agreements, regardless of when (subsequent to October 23,

1974) the agreements may have been entered into. In proposing this exemptive rule, the Commission is also acting under its plenary authority under section 4(c)(b) of the Act with respect to swap agreements that may be regarded as commodity options. The rule also exempts, as permitted by section 4(c)(1), all persons and entities for the activity of offering, entering into, rendering advice or rendering other services with respect to swap agreements covered by the rule. Such persons, however, engaged in activity otherwise subject to the Act would not be exempt for such activity, even if it were connected to their exempted swaps activity. In this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act. Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any swap agreement in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act applies to the swap agreement activities of their affiliated persons.

The Commission believes that the proposed exemption, with its terms and conditions, is consistent with the public interest and the purposes of the Act. The Commission is aware that swap agreements are used by corporations, financial institutions, governments, governmental entities and others, and are important tools that are used by these entities to manage financial risk and accomplish other financial objectives. The Commission believes that, in issuing this exemption, legal risk, and thus financial risk, is reduced within the financial markets and that this would be in the public interest.¹² The Commission also believes that, in the case of swap agreements covered by the exemption, the application of the exchange trading requirements of the Act and other attendant restrictions is unnecessary to protect the public interest and creates an inappropriate burden on commerce. The Commission believes that in certain circumstances the benefits from customization may be greater than the potential liquidity gains

⁴ Section 4(c)(2) (to be codified at 7 U.S.C. 6(c)(2)) states that the Commission shall not grant any exemption unless the Commission determines that the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

In this regard, the Conference Report on the 1992 Act states:

The Conferees do not intend for this provision to allow an exchange or any other existing market to oppose the exemption of a new product solely on grounds that it may compete with or draw market share away from the existing market.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

⁵ Specifically, new Section 4(c)(5)(B) permits the Commission promptly following the enactment of this subsection, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11, United States Code) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this Act.

⁶ 54 FR 30694 (July 21, 1989). In proposing this rule under new Section 4(c)(1), the Commission does not intend to affect transactions undertaken in accordance with the Policy Statement.

⁷ See Policy Statement, 54 FR at 30695, fn. 12-15.

⁸ In granting exemptive authority to the Commission under new Section 4(c), the Conferees on the 1992 Act: recognize[d] the need to create legal certainty for a number of existing categories of instruments which trade today outside the forum of a designated contract market. These instruments may contain some features similar to those of regulated exchange-traded products but are sufficiently different in their purpose, function, design, or other characteristics that, as a matter of policy, traditional futures regulation and the limitation of trading to the floor of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce. H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992).

⁹ The Commission notes that in enacting this limitation, Congress did not intend to call into question the legality of securities-based swap or other transactions which occur in the private marketplace at the present time, that do not violate the Accord. H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Commission shares this view.

¹⁰ These are sections 1a and 2(b), definitions; section 4(c) and 4(d), the exemptive authority provisions; section 8 dealing with, among other things, the Commission's treatment of confidential information; and, section 12(e)(2)(A), regarding the nonapplicability of certain state laws to agreements exempted under section 4(c).

The Commission's proposal, if adopted, would not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), including applicable securities laws or antifraud statutes of general applicability, to these swap agreements or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong. 2d Sess. 83.

¹¹ The issuance of this proposed rule should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has made no such determination.

¹² See H.R. Rep. No. 978, 102d Cong. 2d Sess. 78 (1992).

from exchange trading of more standardized products. Further, the marginal benefits to swap market participants of access to a guaranteed clearinghouse facility may be relatively low due to the capability of these participants to adequately monitor counterparty credit risk. Further, the Commission believes that the proposed exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. The Commission invites comments specifically addressed to these issues, as well as comments on the antitrust considerations this proposal may raise under section 15 of the Act.

The proposed exemption adopts the definition of "swap agreement" incorporated into new section 4(c)(5)(B) and specifically set forth in 11 U.S.C. 101(55). This definition reflects Congressional intent that legal certainty be given to swap agreements with differing economic and financial characteristics. This definition, while broad, reflects the diversity of swap transactions in the marketplace. However, the Commission believes the terms and conditions of proposed Rule 35.2 adequately defines and limits the scope of activity permitted under the exemption.

In considering the persons that may enter into swap agreements, the Commission is proposing to use the list of "appropriate persons" set forth in new section 4(c)(3)(A) through (J), provided that a natural person only qualifies to the extent such person falls within category (K) described below. This approach is consistent with Congressional intent that the Commission may limit the terms of an exemption to some, but not all, of the listed categories of appropriate persons.¹³ As the swap agreement may only be "entered into" by appropriate persons, this determination is made at the inception of the transaction.

New section 4(c)(3)(K) of the Act also authorizes the Commission to determine other persons to be "appropriate persons" for swap agreements in light of their financial or other qualifications, or if appropriate regulatory protections are applicable. The Commission is therefore proposing in Rule 35.1(b)(2)(xi) to permit persons, including natural persons, to enter into swap transactions provided their net worth exceeds \$5 million dollars or their total assets exceed \$10

million.¹⁴ The Commission requests comments specifically addressed to whether these thresholds are appropriate and whether net asset, net worth or other financial criteria should be added to any other category of "appropriate person."

In addition to the condition that the swap agreement be entered solely between appropriate persons as specified in proposed Rule 35.2(A), the Commission is proposing to impose three further conditions. First, proposed Rule 35.2(b) provides that swap agreements may not be part of a fungible class of agreements that are standardized as to their material economic terms. This condition is designed to assure that the exemption does not encompass the establishment of a market in swap agreements, the terms of which are fixed and are not subject to negotiation, that functions essentially in the same manner as an exchange but for the bilateral execution of transactions.

The phrase "material economic terms" is intended to encompass terms that define the rights and obligations of the parties under the swap agreement and that, as a result, may affect the value of the swap at origination or thereafter. Examples of such terms may include notional amount, amortization, maturity, payment dates, fixed and floating rates or prices (including the methods by which such rates or prices may be determined), payment computation methodologies and any rights to adjust any of the foregoing. Standardization of material economic terms is a necessary, but not sufficient, condition for fungibility, as other factors, such as individual negotiation of other material terms or counterparty credit risk also affect fungibility. As a result of, for example, the existence of common conventions in related markets or the hedging of risks incident to common assets or liabilities, swap agreements may have the same economic terms but yet not be standardized or fungible.

Standardization of terms that are not material economic terms, for example, definitions, representations and warranties, and default and remedies provisions, as found in certain forms and master agreements published by various associations, is not by itself

violative of this requirement.¹⁵

Moreover, a swap agreement would not be considered fungible or standardized simply because it is subject to a netting system or arrangement permitted under paragraph (d) of the proposed rule provided the material economic terms are subject to individual negotiation by the parties.

Second, proposed Rule 35.2(c) requires that the creditworthiness of any party having an actual or potential obligation under the swap agreement be a material consideration in entering into or determining the terms of the swap agreement including pricing, cost or credit enhancement terms. The standard is intended to be objective. The Commission is not proposing to require parties to actually negotiate (or demonstrate that they have negotiated) particular provisions. The clarifying phrase in the proposed rule regarding "any party having an actual or potential future obligation" refers to obligations that create credit risk, not to ancillary obligations, such as obligations to deliver documents or perform (or refrain from performing) financial or business related covenants. By this criteria, the Commission is limiting this exemption, at this time, to transactions that are not subject to a clearing system where the credit risk of individual members of the system to each other in a transaction to which each is a counterparty is effectively eliminated and replaced by a system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction. The "creditworthiness" condition is not intended to limit the ability of parties to undertake any bilateral collateral or margining arrangements to address credit issues. As a result, parties would not be prevented from entering into multiparty arrangements for processing bilateral collateral or margin arrangements in order to minimize the number of collateral or margin transfers.

Third, proposed Rule 35.2(d) provides that the swap agreement may not be entered into and traded on or through a multilateral transaction execution facility. A multilateral transaction execution facility is a physical or electronic facility in which all market makers and other participants that are members simultaneously have the ability to effectuate transactions and

¹⁴ The Commission notes that in its recently promulgated Rule 4.7, 57 FR 34853 (Aug. 7, 1992) it has exempted from certain requirements of 17 CFR part 4 the registered commodity pool operators of pools sold solely to certain highly accredited participants, including certain natural persons with a net worth exceeding \$1 million or an individual income in excess of \$200,000 and who meet portfolio requirements of \$2 million in securities or at least \$200,000 in exchange-specified initial margin.

¹⁵ Standardization of these terms in published forms is not dissimilar to the standardization of terms for other areas, such as letters of credit. The publication of such standard terms facilitates communications and negotiations, but does not mean the provisions themselves are not subject to substantial negotiation.

¹³ H.R. Rep. No. 978, 102d Cong. 2d Sess. 79 (1992).

bind both parties by accepting offers which are made by one member and open to all members of the facility. This limitation is not intended to preclude participants from engaging in bilateral privately negotiated transactions, even where these participants use computer or other electronic facilities to communicate simultaneously with other participants. The Commission understands such facilities are in use today. However, the proviso to proposed Rule 35.2 (b) and (d) is intended to make clear that its requirements do not apply to a facility or arrangement that facilitates the netting of payment obligations.

The Commission believes this proposed rule addresses the existing market for swap agreements as it is presently conducted. In particular, the Commission is not aware of any swap agreements that are entered into and traded on or through a multilateral transaction execution facility at this time. However, to the extent that market participants wish to use or establish such a facility for swap transactions, the Commission will evaluate the terms and conditions, if any, that would be appropriate under section 4(c) of the Act in connection with any request for exemptive relief involving such a facility. Further, the Commission will also examine any proposals that involve the use of clearing arrangements that do not fall within the terms of the proposed rule. The Commission will, of course, consistent with section 4(c), also consider exemptive relief on a case-by-case basis for agreements (including classes of agreements) not addressed in this rule.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96-354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization." 5 U.S.C. 601(6).¹⁶ The Commission previously

has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets,¹⁷ futures commission merchants,¹⁸ registered commodity pool operators¹⁹ and large traders²⁰ should not be considered small entities for purposes of the RFA.

The Commission believes that it is unlikely that firms defined as small businesses under section 3 of the Small Business Act could offer or be offered swap agreements and thus be affected by the proposed rule exempting such agreements. Further, the proposed rule would not add any legal, accounting, consulting or expert costs but rather would broaden the categories of permissible products sold other than on designated exchanges. The determination of whether a swap agreement would qualify for the proposed exemption requires minimal analysis of data that will be readily accessible to the offeror.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed to be amended, would have a significant economic impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The Commission has determined that proposed Part 35 does not impose any information collection requirements as defined by the PRA. Persons wishing to comment on this determination of no information collection burden should contact Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and the Office of Management and Budget, Paperwork Reduction Project (3038-xxxx), Washington, DC 20581.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity options, Prohibited transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1)(A), 4(a), 4c, 8a and 12(e), 7 U.S.C. §§ 2, 6(a), 6c and 12a, as amended, the Commission hereby proposes to add part 35 to chapter I of title 17 of the Code of Federal Regulations as follows:

PART 35—EXEMPTION OF SWAP AGREEMENTS

Sec.

35.1 Definitions.

35.2 Exemption.

Authority: 7 U.S.C. 2, 6, 6c and 12a.

§ 35.1 Definitions.

(a) *Scope.* The provisions of this Part shall apply to any swap agreement which may be subject to the Act, and which has been entered into on or after October 23, 1974.

(b) *Definitions.* As used in this Part:

(1) *Swap agreement* means:

(i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(ii) Any combination of the foregoing; or

(iii) A master agreement for any of the foregoing together with all supplements;

(2) *Appropriate person* means, and shall be limited to the following person or classes thereof:

(i) A bank or trust company (acting in an individual or fiduciary capacity);

(ii) A savings association;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(v) A commodity pool formed or operated by a person subject to regulation under the Act;

(vi) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the swap agreement are guaranteed or otherwise supported by a letter of credit or keepwell, support, or

¹⁶ "Small organizations," as used in the RFA, means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration ("SBA") for small organizations. Agencies are expressly authorized to establish their own definition of small organization. *Id.*

¹⁷ 47 FR 18618 (April 30, 1982).

¹⁸ *Id.* at 18619.

¹⁹ *Id.*

²⁰ *Id.* at 18620.

other agreement by any such entity or by an entity referred to in paragraph (b)(2) (i), (ii), (iii), (iv), (v) or (vi) of this section;

(vii) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 *et seq.*), or a commodity trading adviser subject to regulation under the Act.

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) acting on its own behalf or on behalf of another appropriate person: *Provided, however*, that if such broker-dealer is a natural person, the broker-dealer must also meet the requirements of subsection (2)(xi) of this section;

(x) A futures commission merchant, floor broker or floor trader subject to regulation under the Act acting on its own behalf or on behalf of another appropriate person: *Provided, however*, that if such futures commission merchant, floor broker or floor trader is a natural person, the futures commission merchant, floor broker or floor trader must also meet the requirements of subsection (2)(xi) of this section; or

(ix) Any natural person with a net worth exceeding \$5,000,000 or total assets exceeding \$10,000,000.

§ 35.2 Exemption.

A swap agreement, as well as any person or class of persons offering, entering into, rendering advice or rendering other services is exempt for that activity with respect to such agreement, from all provisions of the Act, (except the provisions of sections 1a, 2(b), 2(a)(1)(B), 4(c), 4(d), 8 and 12(e)(2)(A)) provided the following terms and conditions are met:

(a) The swap agreement is entered into solely between appropriate persons (as defined in § 35.1(b)(2) of this part) at the time they enter into the swap agreement;

(b) The swap agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(c) The creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap

agreement, including pricing, cost or credit enhancement terms of the swap agreement; and

(d) The swap agreement is not entered into and traded on or through a multilateral transaction execution facility; *provided, however*, that paragraphs (b) and (d) of this section shall not be deemed to preclude any arrangement or facility, between and among parties to swap agreements, that provide for netting of payment obligations resulting from such swap agreements.

Issued in Washington, DC, on Nov. 5, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 92-27308 Filed 11-10-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 172

[FHWA Docket No. 92-26]

RIN 2125-AD03

Administration of Engineering and Design Related Services Contracts; Private Sector Involvement Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the administration of engineering and design services contracts in order to establish a private sector involvement program. The establishment of this program is required under the provisions of section 1060 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. It will encourage State Highway Agencies, when using Federal-aid highway funds under the grant-in-aid process, to increase their use of contracts with private consulting firms for procuring engineering and design services when it would be cost effective.

The existing regulation describes the acceptable procurement methods contracting agencies are permitted to use when acquiring these goods or services. The proposed revision to the regulation is essential to implement the provisions of section 1060. Under these provisions the FHWA is allowed to make additional funds available annually after appropriation in fiscal years 1992 through 1997 to at least three States which the FHWA has evaluated and determined have implemented the

most effective programs for increasing the percentage of funds expended for contracting with private sector consulting firms for engineering and design services to carry out Federal-aid highway projects. These private consulting firms include small business firms and small business firms owned and controlled by socially and economically disadvantaged individuals as defined in 49 CFR part 23.

DATES: Comments must be received on or before January 11, 1993.

ADDRESSES: Submit written and signed comments to the Federal Highway Administration, HCC-10, FHWA Docket No. 92-26, room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Donald J. Marttila, Interstate and Program Support Branch, Office of Engineering, 202-366-4637, or Michelle R. Morey, Office of the Chief Counsel, 202-366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Engineering and design services contracts funded with Federal-aid highway funds under this program are subject to subpart A of 23 CFR part 172.

Section 1060 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Pub. L. 102-240, 105 Stat. 1914) authorized \$5 million per year to be appropriated for this program for fiscal years 1992 through 1997. The appropriated funds are to remain available for use until expended.

Funds received by a State under this program may be used only for awarding contracts for engineering and design services to carry out projects and activities for which Federal funds may be obligated under title 23, United States Code.

The FHWA has evaluated this new private sector program area and has determined that its existing procedures have not been affected and are still applicable. In addition, the existing regulatory authority contained in 23 CFR part 172 provides assurance that Federal-aid highway funds authorized under this new program area are properly expended. The proposed

subpart B amendment to 23 CFR part 172 would implement the new program area while retaining all the requirements of 23 U.S.C. 112(b).

The proposed amendment describes the various steps the FHWA would use to evaluate, select, and allocate funds under the new program.

Discussion of New Provisions

The following is a discussion of the major changes for the proposed amendment to the existing regulation.

The regulation would be expanded to include a new subpart B, Private Sector Involvement Program, authorized by section 1060 of the 1991 ISTEA.

Proposed subpart B would apply to all States expending Federal-aid highway funds on contracts with private sector engineering and design firms to carry out Federal-aid highway projects.

Section 1060 authorizes \$5 million per year for the program. Any funding appropriated under this program is available until expended. Funds would be available when appropriated in each of fiscal years 1992 through 1997. Funds received under this program would be available for awarding engineering and design services contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering surveying, mapping and architectural related services as described in 23 U.S.C. 112(b).

The proposed amended regulation would establish procedures the FHWA would use in allocating funds under this new program.

Section-by-Section Analysis

It is proposed to amend part 172 by designating §§ 172.1 through 172.15 as subpart A and by adding a subpart B that would implement a program to encourage engineering and design services contracts with the private sector whenever such contracts would be cost effective.

Section 172.3 Definitions

The definition for *engineering and design services* would be revised to reflect the wording used in 23 U.S.C. 112(b) and a definition for *private sector engineering and design firms* would be added to § 172.3.

Section 172.21 Purpose and Applicability

The proposed subpart B would take effect on the date it is issued as a final rule. It would apply to all States using Federal-aid highway funds to award engineering and design services contracts as described in 23 U.S.C. 112(b) during the period from fiscal year

1992 through 1997. Allocations would be made to States after the funds are appropriated.

Section 172.23 Evaluation and Selection

This proposed section would initially require the FHWA to determine the amount of Federal-aid highway funds expended by each State on contracts with private sector engineering and design firms in fiscal years 1980 through 1990. To the extent that expenditure data are provided by States, these figures will be adjusted to reflect the amounts expended by States on 100 percent State-funded engineering and design services contracts involving projects to be constructed with Federal-aid highway funds. The FHWA would compile Federal-aid expenditure data from information reported under its Fiscal Management Information System. Data on State fund expenditures for engineering and design services would come from the supplemental information a State may provide with its application. The FHWA would use the Federal-aid expenditure data and any supplemental expenditure information to evaluate State engineering and design programs for procuring engineering and design services on Federal-aid highway projects and for the purpose of allocating funds under the private sector involvement program.

This section would allow the FHWA to allocate these funds in each of fiscal years 1992 through 1997 to not less than three States.

This section sets forth the procedures and criteria which would be used in the evaluation of State engineering and design programs for the purpose of allocating funds under the new private sector involvement program. It prescribes the use of the fiscal expenditure data and requires updates in subsequent years. It allows and encourages States to submit additional information on the overall effectiveness of their programs for increasing the percentages of funds expended for contracting with private sector engineering and design firms.

Section 172.25 Funding

Section 1060 authorizes appropriations totalling \$5 million per year for fiscal years 1992 through 1997 from the Highway Trust Fund to fund private sector involvement program. Section 1060 provides that funds received by a State may be used only for awarding contracts for engineering and design services to carry out projects and activities eligible for Federal-aid funding. This proposed section provides that the Federal-aid participation in any project obligated with funds allocated

under this program would be the same as the Federal-aid share applicable to the type of work or project being developed or the system on which the project is located, and to the extent funds are appropriated allows the Federal-aid funds allocated under this program to remain available until expended.

Section 172.27 Reports

This proposed section defines reporting requirements. States receiving funds under this program would report on their expenditure of funds on contracts let to private sector engineering and design firms in carrying out Federal-aid highway projects. Section 1060 requires the FHWA to submit a report to Congress not later than 2 years after enactment of the 1991 ISTEA concerning the implementation of the private sector involvement program. Information obtained from the States would be used in preparing this report.

Rulemaking Analyses and Notices Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposed action will implement the program whereby State highway agencies may apply for Federal-aid highway funds which may only be used to contract for engineering and design services with the private sector. When funds are appropriated, the \$5 million authorized for the program will be made available to at least three States. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 172

Government procurement, Grant programs—transportation, Highways and roads.

The FHWA hereby proposes to amend part 172 of chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: November 2, 1992.

T.D. Larson,
Administrator.

The FHWA proposes to amend 23 CFR part 172 to read as follows:

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES CONTRACTS

1. The authority citation for part 172 is revised to read as follows:

Authority: 23 U.S.C. 112(b), 114(a), 302, 315, and 402; 49 CFR 1.48(b) and 18; 48 CFR 12 and 31; 41 U.S.C. 253 and 259; and sec. 1060, Pub. L. 102-240, 105 Stat. 2003.

2. Section 172.3 is amended by adding introductory text to the section, removing the paragraph designations for all the definitions, placing the definitions in alphabetical order, revising the definition for "engineering and design services", and adding the

definition for "private sector engineering and design firms," as follows:

§ 172.3 Definitions.

As used in this part:

Engineering and design services. Program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping and architectural related services.

Private sector engineering and design firms. Any individual or private firm (including small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals as defined in 49 CFR part 23) contracting with a State to provide engineering and design services.

3. Part 172 is amended by designating §§ 172.1 through 172.15 as Subpart A—Procurement Procedures.

4. Part 172 is amended by adding subpart B, consisting of §§ 172.21 through 172.27, to read as follows:

Subpart B—Private Sector Involvement Program

Sec.

172.21 Purpose and applicability.
172.23 Evaluation and selection.
172.25 Funding.
172.27 Reports.

§ 172.21 Purpose and applicability.

(a) The purpose of this subpart is to implement a program to encourage States to contract for engineering and design services with the private sector whenever such contracts would be cost effective.

(b) This subpart applies to all engineering and design services contracts financed with Federal-aid highway funds.

§ 172.23 Evaluation and selection.

(a) When funds are appropriated for this program, the FHWA will invite States to submit applications to participate in the program. The FHWA will use the applications to make the program allocations under the program.

(b) Using its Fiscal Management Information System, the FHWA will compile data on the amount of Federal-aid highway funds each State has expended on contracts for engineering and design services. In assessing the amount of funds a State spent in procuring engineering and design services, the FHWA will also consider the amounts expended by States on 100 percent State-funded engineering and design services contracts involving

projects to be constructed with Federal-aid highway funds to the extent the State provides such information with its application. The FHWA will update the engineering and design services contract data annually in fiscal years 1993 through 1997.

(c) The FHWA will select not less than three States each fiscal year to receive funds under this program.

(1) Selection of the States to receive funding under this program will be made by determining which States were the most effective in increasing the percentage of funds expended on engineering and design services contracts in the year preceding the fiscal year in which funds are to be allocated. In the selection process, the FHWA will evaluate each State's program of contracting for engineering and design services. The evaluation will consider such information as the amount and percentage of Federal-aid highway funds and State funds expended on engineering and design services contracts, the number of contracts awarded for such services, the relative size of the State's Federal-aid highway program and the increase in use of private sector firms during the preceding year.

(2) Upon FHWA's request for applications, each State interested in being considered should submit its application through its appropriate FHWA Division Office. The application may be in letter form and should include current information on the extent of the State's use of consultant's services for engineering and design on Federal-aid highway projects. In addition, the State may provide data on the amount of 100 percent State-funded engineering and design services contracts involving projects to be built with Federal-aid highway funds and any other information demonstrating the State's effectiveness in increasing the percentage of funds expended on engineering and design services contracts in past years.

§ 172.25 Funding.

(a) Funds received by a State under this program may only be used for awarding engineering and design services contracts with the private sector. These contracts shall carry out services and activities eligible for Federal-aid funding under title 23, United States Code.

(b) The Federal share of any project obligated with funds allocated under this program shall be the same as the Federal share applicable to the type of work or project being developed or the system on which the project is located.

Federal-aid funds allocated under this program shall remain available until expended.

(c) Funding will be allocated to the States each fiscal year from 1992 through 1997 to the extent funds are appropriated.

§ 172.27 Reports.

(a) To assist the FHWA in preparing a report to Congress, each State receiving allocations under this program shall submit a report detailing the amount of funds expended in each of fiscal years 1992 and 1993 by that State on engineering and design services contracts with private sector firms in carrying out Federal-aid highway projects and any changes implemented to increase contracting with the private sector for such services.

(b) The required State reports are to be submitted to the FHWA by November 1, 1993.

[FR Doc. 92-27068 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-30-92]

RIN 1545-AQ69

Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed amendments to the consolidated return regulations revising the investment adjustment system, including the rules for earnings and profits and excess loss accounts.

DATES: The public hearing will be held on Friday, December 18, 1992, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Friday, November 27, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal

Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-30-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, November 27, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying.

Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-25331 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-30-92]

RIN 1545-AQ69

Consolidated Returns; Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the consolidated return regulations revising the investment adjustment system, including the rules for earnings and profits and excess loss accounts. The amendments delink the adjustments to stock basis from the adjustments to earnings and profits. Instead, stock basis is adjusted under rules similar to the rules for adjusting the basis of partnership interests and stock in S corporations. Amendments are also proposed to the rules limiting absorption of a member's losses and deductions when it leaves a consolidated group, modifying the basis of the stock of members in certain group structure changes, allocating a corporation's items of income, gain, deduction, loss, and credit, when it joins or leaves a consolidated group, and allowing a worthless stock loss with respect to the stock of members.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing that will be held on December 18, 1992, beginning at 1 p.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, must be received by November 27, 1992. See notice of hearing published elsewhere in this issue of the *Federal Register*.

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, Attention CC:CORP:T:R (CO-30-92), room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments and requests (with outlines) may be delivered to: Internal Revenue Service, CC:CORP:T:R (CO-30-92), room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, (202) 622-8452; concerning the regulations relating to stock basis, excess loss accounts, and earnings and profits generally, absorption of losses and deductions, and worthless stock loss, Steven B. Teplinsky, (202) 622-7770; concerning the regulations relating to effects of group structure changes, Rose L. Williams (202) 622-7550; and concerning the regulations relating to the allocation

of items when a corporation joins or leaves a group, Roy A. Hirschhorn, (202) 622-7770, or Sharon J. Bomgardner, (202) 622-7770. (The above numbers are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Office T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.1502-19, 1.1502-32(g), 1.1502-33(d)(5), and 1.1502-76(b)(2)(ii)(D). The information is required by the Internal Revenue Service to assure the accuracy of stock basis adjustments of members of consolidated groups, appropriate allocations of tax liability among the members, and proper allocation of the income of corporations joining or leaving a consolidated group. The respondents are members of consolidated groups.

The following estimates are an approximation of the average time expected for a collection of information. The estimates are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 154,063 hours.

Estimated burden per respondent varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of approximately 2 hours.

Estimated number of respondents: 74,247.

Estimated frequency of responses: Once a year.

B. Background

This document proposes amendments to the consolidated return regulations under section 1502 of the Internal Revenue Code of 1986 (the Code). The principal focus of the proposed rules is on the determination and adjustment of stock basis. The proposed rules simplify the current rules, conform the current

rules to recent code amendments, and correct anomalies.

C. The Current Investment Adjustment System

1. In General

The current investment adjustment system (§§ 1.1502-19, 1.1502-32, and 1.1502-33) combines single entity and separate entity treatment of subsidiaries in consolidated groups. Unlike a single corporation with divisions, a consolidated group must determine gain or loss from the disposition of a subsidiary's stock, and each subsidiary must maintain a separate earnings and profits account. These requirements reflect the group's treatment as a collection of separate entities. The investment adjustment system was developed to modify the separate entity treatment of subsidiaries in favor of single entity treatment.

Under current § 1.1502-32, an owning member (P) must adjust its basis in the stock of a subsidiary (S) to reflect S's earnings, and profits, whether positive or negative (E&P). P's basis is also reduced by the amount of any dividends distributed by S to P, if the distributed E&P is deemed to be reflected in P's basis in S's stock (e.g., if S's E&P arose in a prior consolidated return year and is reflected in stock basis through investment adjustments). To the extent reductions exceed P's basis in S's stock, they result in an excess loss account in the stock. P must include its excess loss account in income under current § 1.1502-19, generally when S's stock is sold to a nonmember or becomes worthless. These rules reflect the treatment of P and S as a single entity by causing P's basis (or excess losses account) in S's stock to reflect amounts recognized by S and taken into account in determining consolidated taxable income, and S's distributions to P.

Under current § 1.1502-33, P must adjust its E&P account to reflect the adjustments to this basis in S's stock. As a result, S's E&P is currently "tiered up" to P's E&P through the investment adjustment system. If P is also a subsidiary, P's E&P (which includes S's E&P) is also tiered up through the investment adjustment system and ultimately reflected in the E&P of the common parent. Each member retains its own E&P, however, including its share of the E&P of lower tier members.

P's stock basis and E&P adjustments are generally determined separately for each share of S's stock and are limited to the share's "allocable part" of S's E&P. For example, if the group owns 80 percent of S's only class of stock, only 80 percent of S's E&P tiers up.

The current rules are expressed as a series of complex, mechanical adjustments. The purposes of the investment adjustment system are not articulated in the regulations, and tax policy concerns with respect to stock basis adjustments (e.g., to prevent overstatement of stock basis) often conflict with those for E&P adjustments (e.g., to prevent understatement of E&P). As a result, the current rules do not easily accommodate changes in the tax law, particularly those giving rise to the growing disparity between taxable income and E&P.

2. Tax and E&P Disparities

The current investment adjustment system, as adopted in 1966, was designed to reflect single entity treatment of consolidated groups by simultaneously adjusting both the stock basis of members and their E&P. Because consolidated groups typically are owned through the stock of the common parent, single entity treatment requires the E&P account of the common parent to reflect the group's share of each member's E&P. When the current system was adopted in 1966, E&P was also useful for determining stock basis adjustments. Most of the differences between E&P and taxable income were attributable to items of tax-exempt income and noncapital, nondeductible expenses that, in determining consolidated taxable income on a single entity basis, would be inappropriate to take into account as gain or loss on P's disposition of S's stock. However, the interdependence of the stock basis and E&P rules began to create undesirable results in the investment adjustment system after 1969, when the enactment of section 312(k) (and later section 312(n)) introduced significant timing disparities between E&P and taxable income.

Section 312(k) requires E&P determinations to be based on straight-line depreciation rather than the depreciation actually deducted in determining taxable income. Section 312(n) prevents other items that defer income or accelerate deductions (such as intangible drilling costs, mineral exploration and development costs, and installment reporting of gain) from affecting the determination of E&P. The objective of conforming E&P more closely to economic income was to provide a better measure of the dividend-paying capacity of corporations and prevent corporations from passing tax preferences on to shareholders through nondividend distributions.

These E&P refinements produced unintended effects under the investment adjustment system. A principal purpose of the investment adjustment system is to adjust P's basis (or excess loss account) in S's stock to reflect amounts recognized by S and taken into account in determining consolidated taxable income. Although the refinements conform E&P more closely to economic income, they do not reflect amounts taken into account in determining consolidated taxable income.

The application of section 312(k) to stock basis adjustments was confirmed in *Woods Investment Co. v. Commissioner*, 85 T.C. 274 (1985), *acq.*, 1986-1 C.B. 1, which held that P's basis in S's stock must reflect straight-line E&P depreciation under section 312(k), rather than the accelerated cost recovery deducted by S in determining consolidated taxable income. As a result, groups were not required to account for the accelerated depreciation.

Section 1503(e)(1)(A) was enacted in 1987 to overrule *Woods* and reverse the effects of sections 312 (k) and (n) on stock basis adjustments. Under section 1503(e)(1)(A), stock basis adjustments must generally be determined without regard to section 312 (k) and (n) for purposes of determining gain or loss on dispositions of subsidiary stock after December 15, 1987. See also section 301(e) (modifying E&P for purposes of distributions from subsidiaries).

Because section 1503(e)(1)(A) does not apply for purposes of tiering up S's E&P, adjustments to stock basis and to E&P have been delinked. Thus, two separate systems are currently required—one for determining stock basis and the other for determining E&P.

Congress expected that the principles of section 1503(e)(1) would be incorporated into the investment adjustment system. The legislative history states—

[T]he committee does not believe that the consequences of a disposition of stock in a member of the group should be more favorable than if the operations of the subsidiary had been conducted (and the assets had been owned) directly by the parent corporation. The amendments made by this provision are intended to prevent this result, and the committee expects that appropriate modifications will be made not only to the basis adjustment rules, but to other provisions of the consolidated return regulations, in furtherance of this objective. H.R. Rep. No. 391 (Part 2), 100th Cong., 1st Sess. 1089 (1987).

3. Recent Temporary Regulations

The investment adjustment system has recently been supplemented by §§ 1.1502-31T, 1.1502-32T, and 1.1502-

33T. These temporary rules were issued to prevent dividend stripping and to deal with the basis and E&P effects of certain group structure changes. Because these rules supplement the present system, they must be modified and integrated into the revised investment adjustment system.

D. Overview of Proposed Rules

1. In General

The proposed rules represent a comprehensive revision of the investment adjustment system, as well as a revision of the related consolidated return rules for the determination and adjustment of P's basis in S's stock. It is anticipated that related rules for determining stock basis in certain triangular reorganizations will be provided in subsequent guidance. See proposed § 1.358-6. It is also anticipated that stock basis and E&P issues will be addressed as part of a later revision of the intercompany transaction rules for consolidated groups.

In connection with the revision of the investment adjustment system, several methods for adjusting stock basis and E&P were considered, and the policies underlying the present system were reexamined. For example, consideration was given to conforming basis and partial conforming basis regimes. Under a conforming basis regime, the basis of a subsidiary's stock would conform to the net asset basis of the subsidiary (generally, the basis of its assets, minus its liabilities). Under a partial conforming basis regime, changes in stock basis would be measured by changes in the member's net asset basis.

Each system has significant sources of complexity and presents significant policy issues. The Treasury Department and the Service concluded that the greatest simplification would be achieved by adopting, to the extent feasible, the existing principles for adjusting the basis of partnership interests (section 705) and stock in S corporations (section 1367). The adjustments under these other systems are similar to the adjustments under the current investment adjustment system, and groups therefore should be familiar with the approach. Additional modifications have been adopted to simplify operation of the current rules and to correct anomalies. Comments are solicited on the general approach of the proposed system, as well as on specific issues.

The proposed rules delink stock basis adjustments from E&P adjustments. Separating these systems prevents policies specific to one system from distorting the other. Stock basis

adjustments and E&P continue to tier up, but under separate systems.

In general, P's stock basis adjustments are measured by reference to S's taxable income rather than S's E&P. As in the case of partnerships and S corporations, the rules also take into account tax-exempt income and expenditures that are not deductible or chargeable to capital account.

Because the proposed rules conform the investment adjustment system to recent Code amendments under section 1503(e), the Treasury Department and the Service anticipate that the proposed rules will not materially alter the investment adjustments of most subsidiaries as determined under current law. However, because of the proposed effective dates, simplifying rules, and the correction of anomalies, certain groups will be adversely or favorably affected.

No inference is intended by the proposed rules as to the operation of the current rules.

2. Section 1503(e)(3)

As discussed above, section 1503(e)(1) was enacted in 1987 to reverse the effects of section 312 (k) and (n) on stock basis. Section 1503(e)(3) was enacted in 1988 to provide regulatory authority to limit the application of section 1503(e)(1). Under the limitation, the adjustments under section 1503(e)(1) would not apply, and therefore section 312 (k) and (n) would apply, in the case of any property acquired by the corporation before consolidation. The application would account for the difference between the adjusted basis of the property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits. The legislative history states that—

Such cases include but are not limited to cases where the corporation that holds the pre-affiliation property was not formerly a member of another affiliated group filing a consolidated return or was the common parent of such a group.

In such cases, regulations must take into account the application of section 312(k) to property placed in service prior to such affiliation. Thus, for example, in such cases it is expected that regulations will provide that, instead of the adjustments prescribed by section 1503(e)(1), the stock basis that would otherwise result from the application of the section 312(k) earnings and profits basis will generally be adjusted only to the extent of the excess, if any, of tax depreciation over earnings and profits depreciation during the period the property is owned by the affiliated group filing the consolidated return. Such appropriate modifications to the adjustments provided by section 1503(e)(1) shall apply in the case of the other items (besides

depreciation, H.R. Rep. No. 795, 100th Cong., 2d Sess. 408 (1988), S. Rep. No. 445, 100th Cong., 2d Sess. 432 (1988).

A principal consequence of regulations under section 1503(e)(3) would be to prevent section 1503(e)(1)(A) from having the effect of eliminating the tax on built-in gain in S's assets that exists at the time P acquires S's stock—to the extent attributable to accelerated depreciation before P's acquisition of S's stock.

Example. S's only asset has a tax basis of \$0, an E&P basis of \$60, and a value of \$60. The tax-E&P basis disparity reflects the slower depreciation schedule under section 312(k). P buys all of S's stock for \$60 and P and S file a consolidated return. S sells the asset for \$60, recognizing \$60 of taxable income and \$0 E&P. Under current § 1.1502-32(b)(1), P's basis in S's stock remains \$60 because S has no E&P. By contrast, if section 1503(e)(1) applies, and P's basis in S's stock is adjusted without regard to section 312(k), S would be treated as having a \$60 gain on the sale of the asset for purposes of adjusting stock basis. P's basis in S's stock would increase to \$120 and, by selling S's stock, P could recognize a \$60 loss that could be used to offset S's \$60 gain from the asset.

This problem has been addressed by the loss disallowance rules of § 1.1502-20, which would disallow P's loss on the sale of S's stock in the example. Section 1.1502-20 has a broader scope because it applies to all built-in gain assets, not just depreciable property. The principal focus of § 1.1502-20 was on implementation of the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. See T.D. 8364 [1991-2 C.B. 43]. The loss disallowance rule represents a balancing of various tax policy considerations, including section 1503(e)(3). The approach taken in § 1.1502-20 eliminates the need to apply section 1503(e)(3) to prevent the elimination of corporate level tax.

Section 1503(e)(3) can be interpreted as having other purposes, including authorizing a transitional rule under which benefits conferred on a selling group by *Woods* before the effective date of section 1503(e)(1) could be offset by detriments to the buying group. Implementing section 1503(e)(3) as a transitional rule under the proposed rules would produce substantial administrative and audit burdens for consolidated groups and for the Service.

The Treasury Department and the Service have concluded that, because of the loss disallowance rule and the substantial complexity and burdens that would result from implementing section 1503(e)(3) as a transitional rule, section 1503(e)(3) should not be further implemented under the proposed rules. Thus, as proposed, section 1503(e)(3) would not apply to any disposition on or

after the date the final rules are filed with the Federal Register

E. Proposed Stock Basis Adjustment Rules (§ 1.1502-32)

Under the proposed rules, P's stock basis adjustments with respect to S's stock are determined by reference to S's taxable income or loss, certain tax-exempt and noncapital, nondeductible items, and distributions. As under the current system, a positive adjustment increases, and a negative adjustment decreases, P's basis in S's stock. If a negative adjustment exceeds P's basis, the excess is referred to as P's excess loss account.

Section 1.1502-32(a) describes the basic purposes of the stock basis adjustment rules as reflecting the treatment of P and S as a single entity. Thus, stock basis adjustments prevent items recognized by S from being recognized a second time on P's disposition of S's stock. In addition, even if the adjustments are not necessary to prevent duplication of S's items (e.g., the items are attributable to unrealized loss of S that is reflected in P's cost basis for S's stock), the adjustments have the effect of causing P to recapture the items. (But see § 1.1502-20, disallowing certain stock losses to implement the repeal of the *General Utilities* doctrine.)

1. Amount of Adjustment

The adjustment is the net amount (treating income and gain items as increases and losses, deductions, and distributions as decreases) of S's—

- (i) Taxable income or tax loss;
- (ii) Tax-exempt income;
- (iii) Noncapital, nondeductible expenses; and
- (iv) Distributions with respect to S's stock.

a. Taxable Income and Tax Loss

S's taxable income or tax loss is consolidated taxable income determined by taking into account only S's items. S's losses and deductions are taken into account whether or not they are absorbed by S. By referring to consolidated taxable income, the rules take into account such provisions as the deferral of intercompany items under § 1.1502-13 and the elimination of intercompany dividends under § 1.1502-14.

b. Tax-Exempt Income

P's basis in S's stock is also increased by the amount of S's tax-exempt income, to prevent the income from being indirectly taxed as gain on P's disposition of S's stock. Tax-exempt income is income that is recognized by S

but is permanently excluded from (i.e. never taken into account in determining S's gross income

An item of income is treated as tax exempt income for purposes of stock basis adjustments if it is permanently offset by a deduction or other item and the offsetting item does not represent a recovery of basis (whether through a deduction, loss, cost, expense or otherwise) or an expenditure of money. For example, if S receives a \$100 dividend with respect to which a \$70 dividend-received deduction is allowed under section 243, both the \$100 dividend and the \$70 deduction are taken into account in computing taxable income. In addition, \$70 of the dividend is treated as tax-exempt income (assuming that no corresponding stock basis reduction is required under section 1059 or otherwise). As a result, P's basis in S's stock increases by \$100, \$30 because of S's taxable income and \$70 because of its tax-exempt income.

Similarly, income offset by percentage depletion deductions in excess of basis is tax-exempt. In contrast, income offset by an asset's accelerated depreciation deductions is not tax-exempt because the deductions represent a recovery of S's basis in the asset.

The proposed rules incorporate section 1503(e)(1)(B) by treating discharge of indebtedness income that is excluded from S's gross income under section 108(a) as tax-exempt only to the extent the discharged amount is applied to reduce tax attributes under sections 108(b) and 1017 and the attribute reduction results in a corresponding reduction to the basis in stock of members.

c. Noncapital, Nondeductible Expenses

P's basis in S's stock is also decreased by the amount of its noncapital, nondeductible expenses, to prevent the expenses from being indirectly recovered on the disposition of S's stock. A noncapital, nondeductible expense is a deduction or loss that is recognized by S (whether through a cost, expense, expenditure of money, or otherwise) but is permanently disallowed in determining S's taxable income or loss. For example, federal taxes described in section 275 are noncapital, nondeductible expenses.

b. Basis Pops

Under the current rules, E&P is useful to determine stock basis adjustments because E&P reflects many items of tax-exempt income and noncapital, nondeductible expenses that, on a single entity basis, should not be reflected in consolidated taxable income through P's

disposition of S's stock. In addition to S's recognized items of tax-exempt income and noncapital, nondeductible expense, S's basis in its assets or S's other tax attributes may be adjusted even though the adjustments are not recognition events for S. These adjustments are taken into account under the current rules through the E&P mechanism (although the proper E&P treatment may be unclear in many cases). Because the proposed stock basis adjustments are generally based on recognized items, special rules are provided to reflect these adjustments in stock basis.

S's basis in its assets or S's other tax attributes may be adjusted for a variety of reasons. The adjustments may have the effect of noncapital, nondeductible expenses. For example, the reduction in the basis of investment credit property under section 50(c)(1) eliminates a part of S's cost recovery deductions with respect to the property, thereby increasing its taxable income (or decreasing its tax loss), and section 1503(e)(3)(B) requires the reduction to be reflected in the basis of S's stock. The adjustments may also have the effect of tax-exempt income. For example, if S's basis in an asset is increased under section 167(e)(3)(B) because another member's basis in a related asset is reduced, S's increased cost recovery has the effect of causing S's otherwise taxable income to be tax-exempt.

To reflect adjustments that are not recognition events for S, rules are provided in paragraphs (b)(4) (ii)(D) and (iii)(B) of the proposed rules. Under paragraph (b)(4)(ii)(D), an increase in S's attributes is treated as tax-exempt income only to the extent that it corresponds to a basis decrease taken into account in determining a member's stock basis.

Under paragraph (b)(4)(iii)(B), a decrease in S's attributes may be treated as a noncapital, nondeductible expense to the extent that it is permanently disallowed in determining S's taxable income or tax loss. Whether a decrease is so treated is determined by taking into account both the purposes for requiring the decrease and the purposes of the investment adjustment system. For example, a basis reduction under sections 108(b) and 1017 is required to be treated as a noncapital, nondeductible expense under section 1503(e)(1)(B).

On the other hand, the repayment of debt is generally not a noncapital, nondeductible expense. When S receives a loan, it incurs an offsetting obligation, and S's repayment of the loan eliminates the obligation. Incurring and repaying the loan are generally not

recognition events. Moreover, treatment of groups as single entities generally does not require the repayment to be treated as a noncapital, nondeductible expense because incurring and repaying debt generally result in corresponding adjustments to liabilities.

Similarly, a distribution by S to P to which section 355 applies is generally not a noncapital, nondeductible expense. Instead, specific adjustments to P's basis in S's stock are provided under section 358.

Comments are solicited as to the approach to special adjustments under the proposed rules, and to the identification of particular adjustments for which the treatment under the proposed rules should be changed or clarified. Comments are also solicited as to whether greater certainty can be provided regarding the proper treatment of special adjustments.

e. Distributions

Under the current rules, P's basis in S's stock is reduced by all distributions to P of E&P accumulated by S in post-1966 consolidated return years, because the E&P is deemed to be reflected in P's basis in S's stock under the investment adjustment system. Basis is also reduced for distributions to P of E&P accumulated by S in separate return limitation years (generally years before S became a member of the affiliated group), because the E&P is deemed to be reflected in P's cost basis in S's stock. Basis reductions generally are not made for distributions to P of E&P accumulated in pre-1966 consolidated return years and in separate return years after S becomes a member of an affiliated, nonconsolidated group, because this E&P is deemed to not be reflected in P's basis in S's stock. These rules apply not only to actual distributions, but also to distributions deemed to be made (e.g., under section 305).

A deemed dividend election under current § 1.1502-32(f)(2) has the effect of causing pre-1966 consolidated E&P and separate return affiliated E&P to be reflected in P's basis in S's stock. This election is available only if the group owns all of S's stock. Under the election, an amount equal to all of S's E&P is treated as distributed as a dividend and immediately recontributed to the capital of S. To the extent E&P was accumulated in pre-1966 consolidated return years or in affiliated, separate return years, there is no negative adjustment for the distribution and the recontribution increases the basis of S's stock.

Under the proposed rules, P's basis in S's stock is reduced by all of S's

distributions to P to which section 301 applies, and the deemed dividend election is eliminated. These changes do not prevent pre-1966 consolidated E&P from being reflected in stock basis. The proposed rules apply to S as if the rules were in effect for all consolidated return years of the group, and therefore pre-1966 income corresponding to the E&P is reflected in P's basis in S's stock without the need for a deemed dividend. See the discussion of effective dates in E, 5, below.

The proposed rules for distributions have a significant effect, however, on E&P accumulated in years for which an affiliated group files separate returns. Under the current rules, stock basis is not increased for E&P from these separate return years, but, if the group later files a consolidated return, basis is increased if a deemed dividend is elected. Thus, a significant consolidated return benefit may be achieved with respect to E&P from separate return years.

Implicit in the current rules is the presumption that E&P from affiliated, separate return years is not reflected in the basis of S's stock. This presumption is often inaccurate, and refining the presumption would result in significant additional complexity. For example, section 1503(e) provides that stock basis adjustments are not determined solely by reference to E&P, and therefore the current rules would have to be modified to reflect disparities between E&P and taxable income. See also section 301(e). In addition, special rules would be required to implement section 1059(e)(2)(B) in the case of earnings and profits arising in affiliated, separate return years but attributable to gain accrued before affiliation.

Greater distinctions have arisen in recent years between separate and consolidated returns, and the Treasury Department and the Service do not believe that rules should be developed to extend consolidated return benefits to E&P from separate return years. A distribution always results in a decrease in the value of S's stock, and the basis adjustments reflect this decrease. The simplified approach of the proposed rules is consistent with the approach discussed above with respect to adjustments to S's attributes. See E, 1, d, above.

The proposed negative stock basis adjustments for all distributions does not apply to distributions, made before the effective date of the proposed rules, of E&P accumulated in affiliated, nonconsolidated return years. See E, 5, below. In addition, a deemed distribution and recontribution pursuant

to current § 1.1502-32(f)(2) in a consolidated return year ending before the effective date of the proposed rules will continue to be treated as an actual distribution and recontribution. Thus, the reflection of the distribution in stock basis and the elimination of E&P pursuant to an election under the current rules is generally preserved, although the amount may be changed by the proposed rules.

Because the proposed rules treat all distributions as reducing basis, a deemed distribution and recontribution after the effective date of the proposed rules would not affect stock basis. In addition, as described below, a subsidiary's E&P from consolidated return years is eliminated on leaving a group. See F, 3, a, below. Consequently, the only effect of a deemed dividend under the proposed rules would be to eliminate separate return E&P, a result that is not justified by the single entity principles of the proposed rules. Therefore, the deemed dividend election is not retained after effective date of the proposed rules.

The current rules, like the separate return rules, generally reflect dividend distributions in stock basis at the time they are made. Current §§ 1.1502-32(k) and 1.1502-32T, however, provide special rules to eliminate dividend stripping opportunities through straddles of the consolidated and separate return rules. To avoid the complexities of these current rules, the proposed rules generally take section 301 distributions into account as negative adjustments when the shareholders becomes entitled to them (generally on the record date).

While the approach of the proposed rules eliminates tax planning opportunities in a broader range of cases, it generally does not affect distributions in the ordinary course. If it is later established, based on all of the facts and circumstances, that a distribution will not be made, the initial adjustment is reversed as of the date it was made.

Comments are solicited as to the effects of the proposed rules. For example, section 1504(c)(2) prohibits a life insurance company from joining a consolidated group until it has been affiliated for at least 5 years. No special rules are provided for distribution after the 5-year period of earnings accumulated during the 5-year period. Comments are solicited as to whether special rules would be appropriate in this or other cases, and how special rules, if adopted, could be made administrable.

f. Varying Interests.

Under the current rules, if S's E&P is to be determined before the end of a taxable year, the E&P for the year is prorated on a daily basis.

Under the proposed rules, stock basis adjustments are based on the inclusion of S's items in consolidated taxable income, and S's items are allocated within a year under the applicable principles of proposed § 1.1502-76(b). See K, below. By conforming stock basis adjustments to the inclusion of S's items, the purposes of the investment adjustment system are better achieved.

In addition to being taken into account if S becomes a nonmember, stock basis adjustments may have to be taken into account if P's interest in S changes, even if S remains a member (e.g., S's stock is sold from one chain to another within the group, or S issues additional stock to a nonmember but remains a member). Consequently, the principles of proposed § 1.1502-76(b) are also applied to these transactions, but the ratable allocation principles of proposed § 1.1502-76(b)(2)(ii) may be used without filing an election.

G. Tax Sharing Agreements

Section 1552 and current § 1.1502-33(d) provides methods of allocating federal income tax liability among members. Because federal income tax liability is reflected in E&P, this allocation is reflected through the investment adjustment system in the basis of the stock of members.

Under the proposed rules, taxes continue to be taken into account in determining stock basis adjustments. Rather than relying on the E&P rules, however, the proposed stock basis adjustment rules treat a group as having a tax sharing agreement in effect providing for a 100 percent allocation of any decreased tax liability. See F, 2, below.

The treatment of tax sharing amounts allocated under the proposed rules is analogous to the treatment of allocations under § 1.1552-1(b)(2). For example, if one member owes a payment for taxes to a second member, the first member is treated as indebted to the second member. If the indebtedness is not paid, the amount not paid is generally treated as a distribution, contribution, or both, depending on the relationship between the members.

By determining stock basis adjustments as if a tax sharing agreement is in effect, S's tax savings or burdens that should be borne by or benefit minority shareholders are taken into account. For example, if P owns 80 percent of S's stock, and P saves \$34 of

tax because its \$100 of income is offset by S's loss, but P does not compensate S for this use of the loss, S is treated as having been paid \$34 by P for the tax savings and then as having distributed \$34 back to P. Thus, P's basis in the S stock is reduced by 80 percent of S's \$66 after-tax loss (S's \$100 loss minus P's \$34 deemed payment), and by the entire \$34 tax savings deemed distributed back to P, a total of \$86.80. Similar principles apply to S's tax burdens. This is consistent with the approach discussed above with respect to adjustments to S's attributes. See E, 1, d, above.

2. Allocation of Adjustments

The current rules provide that the basis of each share of S's stock must be adjusted to reflect its "allocable part" of S's E&P, but the rules do not specify how the allocable part is determined. Only limited rules are provided for allocations between common and preferred stock; positive adjustments are allocated to preferred stock only to reflect dividends in arrears and negative adjustments only to reflect distributions of dividends.

The Treasury Department and the Service understand that most subsidiaries have only common stock outstanding and are wholly owned within a group, and that the basis of members in a subsidiary's stock is generally uniform. Where subsidiaries have issued preferred stock, the stock is generally described in section 1504(a)(4). Thus, rules for allocating stock basis adjustments among shares in unusual circumstances are generally not necessary. For those cases in which P owns less than all of S's stock or has different bases in different blocks of stock, or in which S has more than one class of stock outstanding, the proposed rules provide additional guidance.

The negative adjustment for distributions is allocated to the shares of S's stock entitled to the distributions. The remainder of the adjustment with respect to S's stock (the portion described in proposed § 1.1502-2(b)(3)(i) to (iii)) is allocated among the shares of S's stock, including shares owned by nonmembers. However, the allocation to nonmembers has no effect on their basis in S's stock. If the adjustment under proposed § 1.1502-32(b)(3) (without taking distributions into account) is positive, it is allocated first to any preferred stock to cover distributions and arrearages, and then to the common stock. If it is negative, it is allocated only to common stock. An allocation is then made among the classes of preferred and common stock and then among the shares within each class.

a. Common Stock.

Adjustments allocable to a class of common stock are generally allocable equally to each share in the class. However, P must allocate its adjustments with respect to a class to minimize the amount of its excess loss account with respect to any shares within the class. Distributions and any adjustments or determinations under the Code (e.g., a basis increase resulting from a capital contribution) are taken into account before the allocation is made.

If S has more than one class of common stock, the allocation of a stock basis adjustment is determined by taking into account the terms of each class and all other facts and circumstances relating to the overall economic arrangement. An adjustment is generally allocated to reflect the manner in which the classes participate in the economic benefit or burden (if any) corresponding to the income, gain, deduction, or loss allocated.

b. Preferred Stock

Positive stock basis adjustments (determined without taking distributions into account) are allocated to preferred stock to the extent required, when aggregated with prior allocations during the period that S is a member of the consolidated group, to reflect distributions described in section 301 to which the preferred stock becomes entitled, and arrearages arising, during the period that S is a member of the consolidated group. A positive amount that is allocated to a share with respect to a period when the share is owned by a nonmember is not reflected in the basis of the share.

These rules apply automatically if the preferred stock is described in section 1504(a)(4). They also apply to other preferred stock, such as stock with a vote, conversion feature, or other equity interest, unless members own less than 80 percent of each class of common stock. Preferred stock that is not subject to these rules is treated as a second class of common stock for purposes of determining the stock basis adjustments allocable to it. Thus, a group has considerable flexibility in issuing preferred stock to nonmembers without uncertainty as to stock basis adjustments, but if the stock is held by members in unusual situations, basis adjustments must be allocated under the facts and circumstances relating to the overall economic arrangement.

c. Cumulative Redetermination

P's basis (or excess loss account) in each share of S's stock must be

redetermined as of a deconsolidation (as defined in proposed § 1.1502-19(c)(1)(ii)) and as of any other time necessary to determine a tax liability of any person. The redetermination will generally not affect stock basis, however, unless the adjustments are allocated among different classes of stock. Adjustments are first reallocated to preferred stock to reflect distributions and arrearages as of the redetermination. Adjustments not reallocated to preferred stock are reallocated to common stock.

For purposes of administrability, only the actual amounts allocated in previous years can be reallocated, and then only to the extent they have not been previously used. For example, a basis increase originally allocated to common stock in Year 1 can be reallocated to preferred stock to cover dividend arrearages arising in Year 2. However, the group's cost basis in a share of common stock may not be reallocated to cover the dividend in arrears on the preferred stock.

Because reallocations will generally affect P's basis in the shares of S's stock only if S has different classes of stock, and because only actual amounts allocated in previous years (which, as noted in E, 4, below, must be reported annually) may be reallocated, the Treasury Department and the Service do not anticipate that reallocations will be burdensome. Unlike the current rules, which rely on annual determinations of E&P, the proposed rules generally rely on amounts that can be derived from tax return schedules and worksheets.

In revising the stock basis adjustment rules, consideration was given to simplifying the rules by, for example, reflecting S's entire adjustment determined under proposed § 1.1502-32(b)(3) in S's common stock owned by members. Under this approach, allocations would not be made to preferred stock (except, perhaps if distributions were made with respect to the preferred stock, or the preferred stock is treated as common stock for purposes of stock basis adjustments), and the entire adjustment amount would be reflected in S's common stock owned by members even if nonmembers also owned S's common stock. This approach would reflect the fact that S's income and loss on which the adjustments are based is fully included in the consolidated tax return.

Significant distortions may result from allocating all adjustments to common stock owned by members. For example, allocations of all of S's negative adjustments to the group may result in gain on P's disposition of S's stock that exceeds the group's actual gain. Consequently, this approach to

simplification has not been adopted in the proposed rules. Instead, the approach of the current rules is retained with modifications to improve accuracy while preserving administrability.

Comments are solicited on ways to simplify the proposed rules without significant distortions, or to otherwise improve their operation.

3. Overriding Adjustments

Unlike the current mechanically stated rules, the proposed rules are expressed, to the extent feasible, as general principles. Nevertheless, the principles may not encompass every circumstance or provide every necessary interaction with other rules of law.

To prevent avoidance of the purposes of the investment adjustment system, the rules require the adjustments necessary to carry out their purposes. More specific guidance is provided for transfers or distributions of appreciated or depreciated property, and for corporations that cease to be members when the stock of the corporation continues to be owned by members.

Comments are solicited on ways to provide additional guidance on the overriding adjustments or to otherwise improve their operation.

4. Annual Reporting

The current rules require stock basis and E&P adjustments to be made annually (or earlier, if stock is disposed of). The principal effect is to tier up E&P to the common parent at least annually. However, taxpayers have commented in connection with other proposed rules that groups are unlikely to make annual determinations if the characterization of a group's distributions as dividends is not affected by precise annual determinations of E&P. Thus, costly E&P studies may be required when P ultimately disposes of S's stock.

Although disposition of the stock of subsidiaries may not be a frequent occurrence, the failure to make the necessary determinations annually may result in a permanent loss of the requisite information. The proposed rules require annual reporting of stock basis adjustments to ensure that determinations are made while the necessary information is available.

Unlike the current rules, which depend on E&P that may not have to be determined otherwise, the proposed rules are based on items that generally are determined in connection with the preparation of the annual consolidated tax return. Thus, the reporting requirement requires compiling information currently available, and it is

not anticipated that it will significantly increase compliance burdens. The reporting requirement generally applies on a prospective basis, only to annual adjustments arising after the effective date of the proposed rules. However, if a subsidiary's stock is disposed of and the allocation of its basis adjustments must be redetermined (see E, 2, c, above), the adjustments and redeterminations under the proposed rules for all years must be reported at that time.

Comments are solicited as to the burdens imposed by the reporting requirements, and as to alternatives that would assure compliance with the stock basis adjustment rules.

5. Proposed Effective Dates

The proposed rules generally would apply to determinations of stock basis on or after the date the final rules are filed with the **Federal Register**. If the proposed rules apply, basis (and excess loss accounts) generally must be determined or redetermined as if the proposed rules were in effect for all consolidated return years of the group.

However, if P disposes of S's stock before the date the final rules are filed with the **Federal Register**, P's income, gain, or loss and the determinations or adjustments taken into account in determining income, gain, or loss are not redetermined. Nevertheless, if determinations or adjustments to P's basis (or excess loss account) in S's stock reflect determinations or adjustments with respect to stock of a lower tier member, the determinations or adjustments are redetermined if S later disposes of the lower tier member's stock under the proposed rules even though they were previously taken into account in P's disposition of S's stock.

This "disposition approach" is in contrast to a "lock-in approach" under which the current rules would determine adjustments to P's basis in S's stock for periods before the effective date of the proposed rules.

A combination of the disposition and lock-in approaches was used when the current rules were adopted in 1966. The pre-1966 investment adjustment rules required basis decreases similar to many aspects of the 1966 rules, but did not provide for basis increases. Under a lock-in approach, the current rules generally applied the pre-1966 rules to determine P's basis in S's stock on the first day to which the 1966 rules applied. However, P could use a deemed dividend election (see E, 1, e, above) to effectively increase its basis in S's stock as if the 1966 rules had always applied.

The disposition approach offers significant administrative advantages for the proposed rules. The practical

need under the current rules for costly E&P studies to determine stock basis is eliminated. The need for transitional rules to address the whipsaw and planning opportunities from the duplication or omission of items under duplicate systems is also eliminated. Maintaining both the current and proposed investment adjustment systems on an indefinite basis would result in significant compliance and guidance burdens for both taxpayers and the government. In addition, section 1503(e)(1)(A) requires modifications to stock basis adjustments, retroactive to 1972, that are similar to modifications under the proposed rules.

It is not anticipated that the disposition effective date will materially alter the stock basis adjustments for most subsidiaries. Because the proposed rules do not significantly depart from the current rules—as amended by section 1503(e)—the principal effect for most groups is simplification.

Because anomalies have been addressed and the stock basis adjustment rules have been simplified, however, certain groups will be adversely or favorably affected. For example, § 1.1502-32(d)(6), as adopted in 1966, provided incorrect rules for distributions of E&P acquired in reorganizations. These rules were corrected in 1979, but some groups may have artificially high stock basis in subsidiaries because of prior distributions. This artificial basis is eliminated under the proposed rules.

The proposed rules will benefit groups in other situations. For example, if a member incurs losses that reduce its pre-1966 E&P before making a deemed dividend election, absorption of the losses reduces the member's stock basis even though its pre-1966 E&P never increased stock basis. A later deemed dividend election cannot remedy the problem because it is no longer possible to deem the pre-1966 E&P to be distributed. In contrast, the disposition approach would, by applying uniform rules to pre-1966 and post-1965 years, provide a positive adjustment for pre-1966 income that offsets the negative adjustment for post-1965 distributions.

Under the disposition approach, groups that have determined their investment adjustments annually under the current rules will have to recompute their adjustments. However, based on taxpayer comments, the Treasury Department and the Service understand that few groups actually make determinations except when contemplating a stock disposition.

Comments on other recently proposed consolidated return regulations have argued that simplification would be

achieved by applying only one set of rules in the future. Assertions have been made that any expectations of maintaining the status quo are unreasonable because: (i) Taxpayers are unable to accurately predict the availability of future attributes, (ii) the consolidated return rules are legislative in nature and taxpayers should reasonably anticipate legislative changes, and (iii) a specific windfall or detriment may be offset by the correction of other anomalies. If new rules are fundamentally desirable and further sound tax policy, comments argue that the disadvantages to taxpayers should be relatively modest and, even if significant in particular cases, could be justified in the interests of ensuring that a uniform set of rules are applied to all taxpayers.

These principles apply to the proposed stock basis adjustment rules. The proposed rules are predominantly neutral, with a small number of groups favorably or adversely affected. After weighing the possible expectations of groups under the current rules against the complexity and burdens associated with maintaining duplicate systems, the Treasury Department and the Service believe that a disposition approach is necessary. The proposed rules would apply only to determinations of stock basis on or after the date the final rules are filed with the **Federal Register**, and do not redetermine income, gain, or loss from earlier dispositions. Groups will have an opportunity to take the new rules into account in planning with respect to subsidiaries they intend to dispose of.

The proposed rules preserve some aspects of the treatment of distributions made (or deemed made) under the current rules. Deemed dividends under the current rules continue to be taken into account under the proposed rules, and negative adjustments are generally not made for distributions, before the effective date, or affiliated, nonconsolidated E&P.

The reporting requirements under the proposed rules would apply to stock basis adjustments and redeterminations only for taxable years beginning after the date the final rules are filed with the **Federal Register**.

Comments are solicited as to modifications to the proposed effective dates and the extent of any resulting complexity. Comments should consider the feasibility of implementing section 1503(e) as of 1972 while implementing the balance of the proposed rules prospectively. Comments should also address the potential for, and the effect of, duplication or omission of items

under alternative effective dates, and the rules necessary to address these issues

F Earnings and profits (§ 1.1502-33)

1. Direct Tiering Up of E&P

A principal effect of the current investment adjustment system is to consolidate a group's E&P in the E&P account of the common parent. Because of the stock ownership requirements under section 1504, the common parent is typically the only member of a group whose stock is held largely by nonmembers. Therefore, to determine whether distributions to nonmembers should be characterized as dividends, the group's E&P must be consolidated in the common parent.

The proposed rules establish a separate system for adjusting and tiering up E&P. Consequently, anomalies resulting from the interdependence of stock basis adjustment and E&P adjustments are eliminated. For example, if S sustains an E&P deficit and a corresponding tax loss, P's basis in S's stock is not reduced to reflect the E&P deficit under the current rules until the tax loss is absorbed. Because the stock basis adjustment is deferred, the current linked system automatically defers the tiering up of the E&P deficit. The E&P result is incorrect because the group's E&P, determined on a single entity basis, should be reduced to reflect S's E&P deficit when the deficit is sustained.

The proposed rules provide for separately adjusting the basis of S's stock for E&P purposes to determine P's E&P on the disposition of S's stock. Separate stock basis adjustments for E&P purposes are necessary to avoid duplicating E&P. For example, if S earns \$100 of E&P that tiers up and increases P's E&P by \$100, P should not have another \$100 of E&P if it subsequently sells S's stock for an additional \$100 because of S's earnings.

The E&P stock basis rules reflect the general requirement under section 312(f)(1) that separate tax and E&P basis be maintained if E&P adjustments differ from tax adjustments. Moreover, section 1503(e)(1) already modifies the operation of current § 1.1502-32 solely for purposes of determining P's tax gain or loss on the disposition of S's stock. Because current § 1.1502-32 continues to tier up E&P without the section 1503(e)(1) amendments, separate stock basis determinations are already required under current law for tax and E&P purposes.

Although parallel tax and E&P stock basis adjustment systems are required under the existing consolidated return and alternative minimum tax regimes,

the use of duplicate systems runs counter to the simplification approach of the proposed rules. Comments are solicited as to whether further simplification may be achieved, for example, by replacing E&P stock basis adjustments with the adjustments under one of these other regimes. Comments should address the potential for, and the effect of, duplication or omission of items if other systems are substituted.

2. Retention of Tax Sharing Agreement Rules

E&P is generally reduced for federal taxes, and each member must adjust its E&P for an allocable part of the tax liability of the group, determined under section 1552. The current E&P rules also permit groups to allocate additional amounts. For example, if P has \$100 of income and S has \$100 of loss, the group's consolidated taxable income is \$0 and nothing is allocated under section 1552. Current § 1.1502-33(d) provides elective methods by which P may be treated as incurring a liability to S in recognition of P's income offsetting S's loss.

The elective allocation methods of current § 1.1502-33(d) are retained under the proposed rules but are rewritten to improve comprehension. Although these rules are the most complex feature of the current E&P rules, they are retained because the Treasury Department and the Service understand that groups rely on them for non-tax purposes, such as ratemaking for public utilities. It is anticipated that comparable rules for allocating tax liability other than the regular tax liability under section 26(b) will be provided in later guidance.

3. Eliminating and replicating E&P

a. Eliminating E&P

The current rules recognize the potential for dividend stripping if the basis of S's stock is increased under the investment adjustment system to reflect S's E&P and, after S becomes a nonmember, it distributes the E&P under the separate return rules without a corresponding stock basis reduction.

Before 1988, whenever S became a nonmember of the P consolidated group but P retained some or all of S's stock, the investment adjustment system eliminated P's net positive investment adjustments reflected in its retained S stock immediately before S became a nonmember. This rule applied even if, for example, S became a nonmember because the entire P group was acquired by another consolidated group. Application in this instance was harsh because P's investment adjustments

with respect to S's stock would be eliminated immediately before P and S join the new group, and P would still be subject to negative adjustments if S made distributions to P while a member of the new group.

To limit dividend stripping without this harsh treatment, the rules were replaced after 1987 by a basis reduction account. Under this approach, negative adjustments are generally deferred until S actually makes distributions to P with respect to its retained S stock. Although this approach may be an improvement over the prior rule, it operates in the context of the current rules and must mirror the complex basis rules of the Code.

The proposed rules take a different approach to the dividend stripping problem. Under the proposed rules, S's stock basis adjustments in the P group are preserved but S's E&P arising in the P group is generally eliminated immediately before S becomes a nonmember. Thus, if S makes a distribution to P under the separate return rules before earning post-consolidated E&P, P's basis in S's stock may be reduced under the general basis reduction rules of section 301(c)(2) (or the distribution may be in excess of basis and taxed accordingly under section 301(c)(3)). The elimination of S's E&P does not tier up and eliminate a corresponding amount of P's E&P.

Although the proposed rules appear to dramatically depart from the current rules, groups generally have been able to achieve comparable results on an elective basis through the deemed dividend rules. Thus, the principal effect of the proposed rules is to eliminate the elective feature of the current rules. This elimination of S's E&P when it becomes a nonmember reflects the single entity treatment of groups, under which the sale of S's stock is treated as the sale of a division of P.

An exception to E&P elimination is provided if S's E&P would be eliminated by reason of an acquisition of the entire group. Consistent with the principles of section 312(h), special rules are also provided to allocate E&P in transactions in which section 312(h) would allocate E&P if the corporations were filing separate returns.

Although limited special rules are provided, comments are solicited as to whether the elimination of E&P is believed to cause unintended benefits or detriments to taxpayers as a result of the interaction with other applicable rules or requirements. In particular, comments should consider the adjustments that are appropriate if S's stock is not wholly owned by members.

of the consolidated group immediately before S becomes a nonmember, or in the context of a life/nonlife consolidated group.

b. Replication of E&P

The proposed rules also retain aspects of the current rules designed to ensure that the E&P account of the common parent reflects the group's E&P. Thus, if the common parent of the group changes but the group remains in existence (e.g., in a reverse acquisition under § 1.1502-75(d)(3)), the E&P of the former common parent is replicated in the E&P of the new common parent.

The current rules for replicating E&P are limited to group structure changes where there is at least 80 percent continuity in the ownership of the group. If the group continues but there is less than 80 percent continuity, E&P is not replicated but other adjustments are provided to cause the group's E&P to be reflected in the new common parent's E&P account. In addition, § 1.1502-33T(a)(2) requires proper adjustments to E&P if a member changes its location in the group.

Single entity treatment of a group requires the common parent's E&P account to reflect the group's E&P. This requirement depends not on continuity in the ownership of the group, but on whether the group survives. The proposed rules therefore replicate E&P in the new common parent without regard to continuity in ownership. In addition, unlike under the current rules, replication of E&P is not limited to nonrecognition transactions.

The need for § 1.1502-33T(a)(2) of the current rules, which adjusts E&P for changes in the location of a member within the group, is unclear and is not retained in the proposed rules. Comments are solicited as to the proper focus of this rule.

4. Proposed Effective Dates

Consistent with proposed § 1.1502-32, the proposed rules under § 1.1502-33 generally would apply with respect to determinations of E&P (e.g., for purposes of a distribution with respect to stock, or an adjustment under section 312(h)) on or after the date the final rules are filed with the **Federal Register**. If the proposed rules apply, E&P must be determined or redetermined as if the proposed rules were in effect for all consolidated return years of the group.

However, if P disposes of S's stock before the date the final rules are filed with the **Federal Register**, P's E&P from the disposition and all other determinations or adjustments taken into account in determining P's E&P are not redetermined. Nevertheless, if

determinations or adjustments to P's basis (or excess loss account) in S's stock reflect determinations or adjustments with respect to stock of a lower tier member, the determinations or adjustments are redetermined if S later disposes of the lower tier member's stock under the proposed rules even though they were previously taken into account in P's disposition of S's stock.

The proposed rules would apply only to deconsolidations and group structure changes occurring on or after the date the final rules are filed with the **Federal Register**. In addition, deemed dividends under the current rules are taken into account under the proposed rules.

Under the proposed effective dates, the complex transitional provisions of the current rules are no longer necessary. Because groups were not required under the current rules to tier up E&P before 1976, however, comments are solicited as to the effect of the proposed effective dates. In particular, comments are solicited as to whether the considerations for the effective date of the proposed stock basis adjustments differ from those for the effective date of the proposed E&P adjustments.

G. Excess Loss Accounts (§ 1.1502-19)

1. In General

The excess loss account (ELA) rules are an extension of the rules for adjusting stock basis. P's basis in S's stock is reduced as the group absorbs S's losses and as S makes distributions to P. The reductions are not limited to the group's basis in S's stock and, to the extent reductions exceed stock basis, they result in an ELA with respect to P's S stock. P's ELA is included in its income when P disposes of the stock, and the income is generally treated as gain from the sale of the stock.

An ELA ordinarily arises with respect to a share of S's stock only if S's losses and distributions are funded with capital not reflected in the basis of the share. The reductions may be funded by creditors or by other shareholders, including other members.

The proposed rules revise and simplify the current rules by applying principles. In general, an ELA is treated as negative basis for computational purposes, to eliminate the need for special ELA rules paralleling the basis rules of the Code. Similarly, the rules of the Code are generally used to determine the timing for inclusion of an ELA in income. For example, if S has an ELA in T's stock and distributes the stock to P in a transaction to which section 355 applies, section 358 eliminates S's ELA (instead, P's basis in T's stock is an allocable part of P's basis

in S's stock), and section 355 provides that any gain realized by S from the disposition of T's stock is not recognized.

Although P's ELA in S's stock is generally included in income when P or S becomes nonmembers of the group, a special exception is provided if they cease to be members by reason of the acquisition of the entire group. Unlike the current rules, the proposed rules do not provide special investment adjustments to prevent income attributable to preacquisition ELAs from increasing the E&P or the stock basis of members of the acquiring group. An ELA is merely one form of built-in gain to the acquiring group, and built-in gain is more generally addressed by § 1.1502-20.

2. Worthlessness

Under the current rules, worthlessness is treated as a disposition that requires P's ELA in S's stock to be included in income. S's stock is treated as worthless under a variety of measures that are generally intended to prevent P from deferring its inclusion of the ELA in income.

If P is required to include the ELA in income before S recognizes any corresponding gain with respect to its assets and liabilities, S's gain may be duplicated in the group's computation of consolidated taxable income. For example, if S borrows and loses funds, which causes P to have an ELA in S's stock, P's inclusion of the ELA in income may duplicate the group's later income associated with S's discharge of the indebtedness. Once the ELA is included in income, § 1.1502-20 prevents S's subsequent discharge income from being offset by a loss on P's disposition of S's stock.

In addition, recent bankruptcy cases indicate a judicial tendency to protect a bankrupt subsidiary's tax attributes. For example, because section 382(g)(4)(D) may subject S's losses to a zero section 382 limitation if P treats S's stock as worthless, the courts may prevent S's stock from being treated as worthless. See, e.g., *In re Prudential Lines, Inc.*, 928 F.2d 565 (2d Cir. 1991), cert. denied, 112 S.Ct. 82 (1991).

The proposed rules revise the worthlessness rules to more fully implement the single entity treatment of consolidated groups. Viewing P's investment in S's stock as an investment in S's assets, the proposed rules generally do not treat S's stock as worthless until substantially all of S's assets are treated as disposed of, abandoned, or destroyed within the meaning of section 165(a).

For this purpose, S's assets are not considered disposed of merely because they are subject to liabilities, unless such treatment is proper under general federal income tax principles (e.g., an abandonment or foreclosure). By deferring the treatment of S's stock as worthless, tension is alleviated with respect to the cases protecting the attributes of bankrupt subsidiaries.

Under a special rule, S's stock is treated as worthless on any day that an indebtedness of S is discharged, if the amount discharged and excluded from gross income under section 108(a) exceeds the amount of tax attributes reduced under sections 108(b) and 1017 as a result of the exclusion. This rule is needed because, after its indebtedness is discharged, S is unlikely to be treated as worthless under the general rule.

3. Elective Basis Reduction

Under the investment adjustment system, S's losses result in negative adjustments only with respect to its common stock. If part of P's investment in S is in the form of S's obligations or preferred stock, P may have an ELA in the common stock before S's losses exceed P's aggregate investment. Under the current rules, P may elect to reduce the ELA in exchange for reducing its basis in other stock or obligations of S.

Section 1503(e)(4) eliminated the election to reduce P's basis in S's obligations. The election was then further limited if it had the effect of netting stock gains and losses in a manner that is inconsistent with § 1.1502-20. As a result, the election has very limited applicability.

The proposed rules eliminate the election. Under proposed § 1.1502-32, adjustments with respect to a class of S's stock are generally allocated by P among its shares within the class to minimize any excess loss account, additional rules are provided for allocating adjustments between different classes of stock, and the allocations are cumulatively redetermined when tax liability is affected.

4. Proposed Effective Dates

Consistent with the effective date for the proposed rules under §§ 1.1502-32 and 1.1502-33, the proposed rules generally would apply to determinations of stock basis and excess loss accounts on or after the date the final rules are filed with the Federal Register. Moreover, if the proposed rules apply, the basis (or an excess loss account) generally must be determined or redetermined as if the proposed rules were in effect for all consolidated return years of the group.

The proposed rules with respect to worthlessness of stock would apply to consolidated return years ending on or after the date the final rules are filed with the Federal Register.

H. Loss Disallowance Rule (§ 1.1502-20)

The proposed rules amend § 1.1502-20 to conform it to the revised investment adjustment system. Some technical provisions and examples, particularly those relating to the effect of loss disallowance and basis reduction on investment adjustments, have been eliminated. They are no longer needed because the effect of loss disallowance on stock basis and E&P is addressed under proposed § 1.1502-32 and 1.1502-33.

I. Reciprocal Basis Adjustments (§ 1.1502-11(b))

Under the current rules, the absorption of S's losses may be limited if P disposes of S's stock. For example, if P sells S's stock at a gain, S's losses may not offset the gain. Without this limitation, P's basis in S's stock would be reduced under § 1.1502-32 by the absorption of the loss, and P's gain would be increased. In effect, offsetting S's losses against the gain only increases the gain, and does not reduce the group's consolidated taxable income.

The proposed rules rewrite these provisions to simplify their operation and to improve comprehension. Rules are also provided for dispositions of chains of corporations, and for cases in which the disposition of a member's stock causes deferred gain or loss to be taken into account. No other special rules apply to limit the absorption of attributes if more than one member is disposed of in the same consolidated return year.

The proposed rules would apply to consolidated return years beginning on or after the date the final rules are filed with the Federal Register.

J. Basis of Stock (§ 1.1502-31)

The provisions of current § 1.1502-31 are not continued in the proposed rules. It is anticipated that these rules will be modified in connection with revisions to the intercompany transaction rules for consolidated groups. In general, it is anticipated that the current rules will be replaced by rules that are consistent with the separate return rules.

The proposed rules incorporate the principles of current § 1.1502-31T. Thus, if the common parent of a group changes but the group remains in existence (e.g., in a reverse acquisition under § 1.1502-75(d)(3)), special rules apply to determine the effect of this group

structure change on the basis of the stock of members. These rules coordinate with the adjustments required under proposed § 1.1502-33(f) to the E&P of the new common parent and preserve in the new common parent the relationship between the former common parent's E&P and the former common parent's basis in its assets.

Following a group structure change, the basis of the stock of the former common parent reflects the net basis of the former common parent's assets. If the former common parent merges with another corporation, the stock basis of the surviving corporation reflects both the former common parent's net asset basis and the basis of the other corporation's stock.

Unlike the current rules, the proposed rules do not depend on 80 percent continuity of ownership of the group, and are not limited to nonrecognition transactions. Thus, consistent with proposed § 1.1502-33(f), the proposed basis rules apply uniformly to all transactions in which the common parent changes, but the group remains in existence.

The proposed rules generally would apply to group structure changes occurring on or after the date the final rules are filed with the Federal Register.

K. Allocation of Items Between Consolidated and Separate Returns (§ 1.1502-76(b))

1. Allocation Rules

Under the current rules, a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If S is acquired during a consolidated return year, its income for the portion of its original taxable year (i.e., the taxable year determined without taking § 1.1502-76(b) into account) for which it is not a member must be included in a separate return (which may be the consolidated return of another group). Allocation of S's income between the consolidated and separate returns must be based on the income shown on its permanent records, and if the allocation of an item cannot be determined from its permanent records, it must be allocated ratably.

The current rules provide little guidance for allocating items that relate to both returns (e.g., real estate taxes treated as incurred on a payment date, or employee plan contributions treated as made at year-end). The rules also do not provide for the allocation of credits,

items carried between years (e.g., net operating losses carried under section 172), items that have no special rules for short periods (e.g., section 1253 amortization deductions), and items arising in passthrough entities in which S has an interest.

The proposed rules revise the allocation rules to provide greater certainty and prevent inconsistent allocations. Under the proposed rules, S's original taxable year is treated for all federal income tax purposes as ending as of the close of the day it becomes or ceases to be a member of a consolidated group. This closing of S's year is consistent with the accounting treatment commonly used for contractual and financial statement purposes when a subsidiary joins or leaves a group.

Because a mid-year closing of a taxable year may be administratively burdensome to groups, the proposed rules provide an election under which S may ratably allocate items of income, gain, deduction, loss, and credit. The election is not available, however, if S is required to change its annual accounting period (for example, if S is a calendar-year taxpayer acquired by a fiscal-year consolidated group and is therefore required to adopt the fiscal year).

For purposes of determining the items to be allocated and their timing, location, character, and source, S's original taxable year in which it joins or leaves a consolidated group is generally treated as a single taxable year. However, the separate and consolidated returns are treated for all purposes as returns for different taxable years with respect to any item carried to or from these years (e.g., a net operating loss carried under section 172) and with respect to the application of section 481.

All of S's items except specified extraordinary items may be ratably allocated. Items are ratably allocated by allocating an equal portion to each day of S's original taxable year. Because the original taxable year is generally treated as a single taxable year, the rules of the Code applicable to short periods do not apply unless the original taxable year is a short period. Comments are solicited as to whether the status of S (e.g., as a dealer) should also be determined by treating the original taxable year as a single taxable year.

The extraordinary items that are not allocable include income, gain, or loss from capital assets, trade or business assets, and from bulk sales of ordinary income assets. Also treated as extraordinary items are section 481(a) adjustments and the effects of any change in accounting method initiated after becoming or ceasing to be a

member, cancellation of indebtedness income, interest from certain capital transactions, certain credits, certain items of controlled foreign corporations, and other items identified by the Commissioner.

Comments are solicited as to ways in which these rules may be simplified, and to alternative allocation methods that should be considered. The comments should consider the interaction of these and other methods with limitations under the Code (e.g., section 382(b)(3)), as well as any procedural issues that the methods present (e.g., the need to share information between groups or to coordinate audits of different groups).

The proposed rules also eliminate administrative uncertainty arising under current law from what is frequently referred to as "the lunch rule," by making the time of the day that a corporation joins or leaves a group irrelevant to inclusion in the consolidated return. Under the proposed rules, unless otherwise provided under applicable law, a corporation joins or leaves a group as of the close of the date on which the event occurs that causes it to join or leave. This approach is consistent with the approach of other rules under Subchapter C of the Code that may apply to the event causing a corporation to join or leave a group. See, e.g., sections 338, 381, and 382.

In addition, the proposed rules reverse an example in the current rules requiring P to close its consolidated return year when it ceases to be affiliated with any subsidiary for an interim period during its taxable year.

2. Elimination of the 30-Day Rules

Under the current rules, if S becomes a member of the P group within the first 30 days of S's taxable year, S may elect to be considered to have become a member of the group as of the first day of its year. In addition, if S has been a member of the P group for less than 30 days of the P group's taxable year, S may elect not to be considered as a member for the year. The purpose of these elections is to eliminate the need for returns for these periods of less than 30 days.

The 30-day rules were intended to be rules of administrative convenience, but the Treasury Department and the Service understand that some groups use the rules to achieve unintended results. In addition, numerous issues arise where, for example, the rules conflict with statutory or regulatory rules relying on precise timing (such as effective dates), or the facts of a transaction conflict with the presumptions of the rules. For example, assume that P, a member of the X group,

sells all of S's stock on January 10, P's stock is acquired by members of the Y group on January 20th, and an election is made to include P in the Y group from January 1st. Is P's gain from the sale of S's stock included in the X group's return or the Y group's return; does S become a member of the Y group; if P has attributes subject to section 382, as of what date is the section 382 limitation applied?

It is not feasible to resolve all of the issues and inconsistencies. Conflicts and inconsistencies are inevitable if the ownership of S's stock is treated as other than where the benefits and burdens reside.

Because of the significant problems presented, the proposed rules eliminate the 30-day rules. To ameliorate any resulting administrative burdens, the proposed rules make available the simplified rules described above for allocating income to the short periods that are eliminated under the 30-day rules. Comments are solicited as to whether the allocation rules adequately simplify the allocation of S's items.

3. Proposed Effective Dates

The proposed rules generally would apply to corporations becoming or ceasing to be members of consolidated groups on or after the date the final rules are filed with the **Federal Register**. The 30-day rules are eliminated with respect to corporations becoming or ceasing to be members of consolidated groups on or after December 1, 1992.

L. Applicability of Other Provisions of Law (§ 1.1502-80)

1. Non-Applicability of Section 165(g)

The potential for P to recognize loss with respect to the worthlessness of S's stock before any corresponding loss is recognized by S with respect to its assets and liabilities may result in the complete elimination of the loss at the corporate level. For example, if S's stock becomes worthless, § 1.1502-20(a) may disallow P's deduction under section 165(g). Nevertheless, P's basis in S's stock is reduced to zero, and S's later recognition of the corresponding loss with respect to its assets may result in P having an ELA in S's stock. If S remains worthless, the ELA is immediately included in P's income under § 1.1502-19, and effectively eliminates S's losses. Although § 1.1502-20(g) may permit S's losses to be attributed to avoid the effect of § losses to be reattributed to avoid the effect of § 1.1502-20(a), the courts may prevent the reattribution to preserve S's attributes for its creditors. See G, 2, above; see also section

382(g)(4)(D), under which S's losses may be subjected to a zero section 382 limitation if S's stock is treated as worthless.

Under section 165(a), P may recognize a loss with respect to S's stock if the stock is sold, exchanged, or abandoned. In addition, section 165(g) provides special rules for recognizing loss with respect to wholly worthless securities. See § 1.165-5. However, no loss is allowed solely because of a decline in the value of S's stock due to fluctuations in its market price or similar causes if the stock has any recognizable value on the date claimed as the date of the loss. See §§ 1.165-4, 1.165-5(f). Section 165(g)(3) treats stock in certain corporations affiliated with the taxpayer as not being a capital asset.

When stock becomes worthless is a question of fact. See, e.g., *Boehm v. Commissioner*, 326 U.S.C. 287 (1945); *Morton v. Commissioner*, 38 B.T.A. 1270 (1938), *aff'd*, 112 F.2d 320 (7th Cir. 1940). In general, P may treat S's stock as worthless even though S remains a member. See Rev. Rul. 63-104, 1963-1 C.B. 172.

Consistent with the ELA rules for worthlessness (see G, 2, above), the proposed rules adopt a single entity view of consolidated groups by generally deferring the worthlessness of S's stock until after S recognizes any corresponding loss with respect to its assets. Under the investment adjustment system, if S's loss is absorbed by the group, P's corresponding loss in S's stock is eliminated.

The proposed rules would apply for consolidated return years ending on or after the date the final rules are filed with the Federal Register.

2. Non-Applicability of Section 301(c)(3)

Under current law, no gain is recognized to the distributee on a distribution between members that is described in section 301(c)(3). Instead, an ELA is created. The current rule is in § 1.1502-14(a)(2). The proposed rules relocate the exclusion to § 1.1502-80.

3. Non-Applicability of Section 357(c)

Under current law, certain transfers of property and liabilities may result in the recognition of gain under section 357(c). If the transfer is between members, the

gain is deferred under § 1.1502-13 and is taken into account under that section.

Under the proposed rules, section 357(c) generally does not apply to transfers between members. If section 357(c) does not apply to P's transfer of property to S in a transaction to which section 351 applies, the excess of liabilities over basis will, under section 358, reduce P's basis in S's stock, and if the reduction exceeds P's basis in S's stock, an ELA is created. Under section 362, S's basis in the assets equals P's basis in the assets immediately before the transfer.

Section 357(c) does apply under the proposed rules if S becomes a nonmember as part of the same plan or arrangement as P's transfer to S (unless P and S continue to be members of the same consolidated group). If section 357(c) did not apply, gain attributable to the excess of liabilities over basis would be duplicated because the excess would reduce P's basis in S's stock (or cause an ELA in the stock) but would not result in a corresponding increase in the basis of S's assets. To limit the duplication of gain, section 357(c) is applied to cause P to recognize gain and allow S to take a stepped up basis in the assets. Thus, P takes gain into account rather than an ELA, and S's basis in the assets reflects P's recognition of the gain.

Comments are solicited as to whether other code provisions, such as section 351(b), should be overridden consistent with the treatment of section 357(c), and whether special rules are necessary if P encumbers property in anticipation of its transfer of the property to S.

The proposed rules would apply to transfers between members occurring on or after the date the final rules are filed with the Federal Register.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. The rules, if issued, will apply to consolidated groups, which tend to be larger entities. Thus, they will generally not have a significant economic impact on a substantial number of small entities nor will they significantly affect reporting or recordkeeping duties of small entities. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f)(1), these regulations will be

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for December 18, 1992, must be received by November 27, 1992.

List of Subjects in 26 CFR 1.1501-1 through 1.1564-1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections "1.1502-19", "1.1502-32(k)", and "1.1502-80" and adding the following citations to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1502-11 also issued under 16 U.S.C. 1502. * * * Section 1.1502-19 also issued under 26 U.S.C. 301(e), 1502, and 1503. * * * Section 1.1502-20 also issued under 26 U.S.C. 337(d) and 1502. * * * Section 1.1502-31 also issued under 16 U.S.C. 1502. Section 1.1502-32 also issued under 26 U.S.C. 301(e), 1502, and 1503. Section 1.1502-32T also issued under 26 U.S.C. 1502. Section 1.1502-33 also issued under 26 U.S.C. 301(e), 1502, and 1503. * * * Section 1.1502-76 also issued under 26 U.S.C. 1502. * * * Section 1.1502-80 also issued under 26 U.S.C. 304(b)(4) and 1502. * * *

Par. 2. In the list below, for each location indicated in the left column, remove the language in the middle column from wherever it appears in that section, and add the language in the right column.

Affected Section	Remove	Add
1.167(c)-1(a)(5)	§§ 1.1502-12(g) and 1.1502-31	§ 1.1502-12(g)
1.489-1T(h)(7)	1.1502-19(a)	1.1502-19
1.1502-13(j) introductory text	1.1502-31	
1.1502-13T(1)(2), Example (1)(i)	Under 1.1502-31(a)	
1.1502-13T(m)(3), Example (3)(i)	Under 1.1502-31(a)	
1.1502-13T(o)(1)(i)	1.1502-19(b)(2)	1.1502-19
1.1502-13T(o)(1)(ii)	1.1502-19(b)(2)	1.1502-19
1.1502-13T(o)(2), Example (c)	1.1502-19(b)(2)(i)	1.1502-19

Affected Section	Remove	Add
1.1502-14(a)(5).....	1.1502-32(k).....	1.1502-32
1.1502-14(b)(3)(ii).....	1.1502-19(b)(2) (other than subdivision (ii) thereof).....	1.1502-19(c)(1)(ii)(A) or (iii)
1.1502-14(d)(3)(ii).....	1.1502-19(b)(2) (other than subdivision (ii) thereof).....	1.1502-19(c)(1)(ii)(A) or (iii)
1.1502-14(d)(4)(ii)(b).....	1.1502-19(b)(2) (other than subdivision (ii) thereof), determined without regard to § 1.1502-19(d) and (e).	1.1502-19(c)(1)(ii)(A) or (iii)
1.1502-14T(c)(1).....	1.1502-19(b)(2).....	1.1502-19(c)(1)(ii) or (iii)
1.1502-14T(c)(2), Example (1)(i).....	Under § 1.1502-31(a).....	
1.1502-14T(c)(2), Example (1)(ii).....	1.1502-19(b)(2)(i).....	1.1502-19(b)(1)(ii)(B)
1.1502-43(a)(3)(ii).....	1.1502-33(c)(4)(ii).....	1.1502-33b
1.1502-43(a)(3)(iii).....	1.1502-33(c)(4)(i)(b).....	1.1502-33(c)(1)
1.1502-47(e)(4)(iii)(B).....	1.1502-19(b)(2)(vi).....	1.1502-19(c)
1.1502-75(d)(5)(viii).....	1.1502-32(b)(2)(iii)(c) and (c)(2)(iii).....	1.1502-32(h)(5)
1.1502-81T(a).....	1.1502-32(b)(1).....	1.1502-32(b)

§ 1.279-6 [Amended]

Par. 3. Section 1.279-6 is amended by adding "and" at the end of paragraph (b)(3), removing paragraph (b)(4), and redesignating paragraph (b)(5) as paragraph (b)(4).

Par. 4. Section 1.1502-1 is amended by adding at the end of paragraph (a) a new sentence to read as follows:

§ 1.1502-1 Definitions.

(a) * * * Except as the context otherwise requires, references to a group are references to a consolidated group (as defined in paragraph (h) of this section).

* * * * *

Par. 5. Section 1.1502-11 is amended by revising paragraph (b) to read as follows:

§ 1.1502-11 Consolidated taxable income.

* * * * *

(b) *Elimination of circular stock basis adjustments*—(1) *In general*. If one member (P) disposes of the stock of another member (S), this paragraph (b) limits the use of deductions and losses in the year of disposition and the carryback of items to prior years. The purpose of the limitation is to prevent P's income or gain from the disposition of S's stock from increasing the use of S's deductions and losses, because the increased absorption would reduce P's basis (or increase in excess loss account) in S's stock under § 1.1502-32 and, in turn, increase P's income or gain. See paragraph (b)(3) of this section for the application of these principles to P's loss from the disposition of S's stock, and paragraph (b)(4) of this section for the application of these principles to multiple stock dispositions. See § 1.1502-19(c) for the definition of disposition.

(2) *Limitation on deductions and losses*—(i) *Determination of limitation*. If S recognizes deductions or losses in the taxable year in which P disposes of one or more shares of S's stock (or S carries over deductions or losses from a prior year to the year of disposition), the

extent to which the deductions or losses offset income and gain may be limited. The limitation is determined by tentatively computing taxable income (or loss) for the year of disposition, and any prior years to which the deductions or losses may be carried, by not taking into account any income or gain P recognizes from the disposition of S's stock.

(ii) *Application of limitation*. S's losses and deductions may offset income and gain only in the amount determined under paragraph (b)(2)(i) of this section. To the extent S's items arising in the year of disposition cannot offset income or gain because of the limitation, the items are treated as a separate net operating or net capital loss (as the case may be) arising in the year of disposition. Although the limitation is computed by tentatively determining the taxable income (or loss) of all members, the limitation, once determined, does not limit the use of deductions and losses of members other than S.

(iii) *Examples*. For purposes of the examples in this paragraph (b), unless otherwise stated, P owns all of S's stock for the entire year, S has only one class of stock outstanding, S owns no stock of lower tier members, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this paragraph (b)(2) are illustrated by the following examples.

Example 1. Limitation on losses with respect to stock gain. (a) On January 1 of Year 1, P has a \$500 basis in S's stock. During Year 1, P has ordinary income of \$30 (determined without taking P's gain or loss from the disposition of S's stock into account) and S has an \$80 ordinary loss. On December 31 of Year 1, P sells S's stock for \$520.

(b) To determine the limitation under paragraph (b)(2)(i) of this section on S's loss, and the effect of the absorption of S's loss on P's basis in S's stock under § 1.1502-32(b), P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated

net operating loss of \$50 (P's \$30 of income minus S's \$80 loss). Thus, only \$30 of S's loss offsets P's income or gain.

(c) Under § 1.1502-32(b), because \$30 of S's loss is absorbed in the determination of consolidated taxable income, P's basis in S's stock is reduced from \$500 to \$470 immediately before the disposition. Consequently, P recognizes a \$50 gain from the sale of S's stock and the group has consolidated taxable income of \$50 for Year 1 (P's \$30 of ordinary income and \$50 gain from the sale of S's stock, less the \$30 of S's loss). Because S ceases to be a member, the \$50 of S's loss that is not taken into account in the determination of consolidated taxable income is a separate net operating loss that is apportioned to S under § 1.1502-79 and carried to its first separate return year.

Example 2. Carrybacks and carryovers. (a) During Year 1, the P group has consolidated taxable income of \$30, and a consolidated net capital loss of \$100 (under the principles of § 1.1502-79, \$50 attributable to P and \$50 attributable to S). On January 1 of Year 2, P has a \$300 basis in S's stock. During Year 2, P has ordinary income of \$30, and a \$20 capital gain (determined without taking the \$100 consolidated net capital loss carryover or P's gain or loss from the disposition of S's stock into account), and S has a \$100 ordinary loss. On December 31 of Year 2, P sells S's stock for \$280.

(b) To determine the limitation under paragraph (b)(2)(i) of this section of S's losses, and the effect of the absorption of S's losses on P's basis in S's stock under § 1.1502-32(b), P's gain or loss from the disposition of S's stock is not taken into account. For Year 2, the P group is tentatively treated as having a \$70 consolidated net operating loss (S's \$100 ordinary loss, less P's \$30 of ordinary income) and no consolidated net capital gain (P's \$20 capital gain, less \$20 of the consolidated net capital loss carryover from Year 1 under section 1212(a) (under § 1.1502-22 and the principles of § 1.1502-79, \$10 is attributable to P and \$10 is attributable to S)). In addition, of the \$70 consolidated net operating loss, \$30 is carried back to Year 1 and offsets P's ordinary income in that year, and \$40 is carried forward. Consequently, under § 1.1502-32(b), P's basis in S's stock is reduced from \$300 to \$230 immediately before the disposition, and P recognizes a \$50 gain from the sale, because \$70 of S's losses offsets income and gain as follows:

S' Year 2 ordinary loss offset in Year 2.....	\$30
S' Year 2 ordinary loss offset in Year 1.....	30
S' Year 1 capital loss offset in Year 2.....	10
Total.....	70

(c) Under paragraph (b)(2)(ii) of this section, P's deductions and losses may offset its gain from the disposition of S's stock. Thus, of the \$100 consolidated net capital loss carryover from year 1, only \$10 of the \$50 attributable to S may offset income and gain for Year 2, but the \$50 attributable to P is not limited. Consequently, the P group's consolidated taxable income for year 2 is \$10:

Ordinary income:	
P.....	\$30
S.....	(30)
Sub Total.....	0
Consolidated net capital gain:	
P (\$20 + \$50 - \$50 (from Year 1)).....	20
S (\$10 from Year 1).....	(10)
Sub Total.....	10
Consolidated taxable income.....	10

(d) Under paragraph (b)(2)(ii) of this section, the \$40 of S's ordinary loss from Year 2 that is not absorbed is treated as a separate net operating loss arising in Year 2. Because S ceases to be a member, the \$40 net operating loss from Year 2 attributable to S and S's \$40 net capital loss from Year 1 are allocated to S under § 1.1502-79 and are carried to S's first separate return year.

Example 3. Allocation of basis adjustments. (a) In Year 1, the P group has consolidated taxable income of \$100. On January 1 of Year 2, P has a \$40 basis in each of the 10 shares of S's stock. During Year 2, P has an \$80 ordinary loss (determined without taking P's gain or loss from the disposition of S's stock into account) and S has an \$80 ordinary loss. On December 31 of Year 2, P sells 2 shares of S's stock for \$85 each.

(b) Under paragraph (b)(2)(i) of this section, the limitation on S's loss is determined by tentatively treating the P group as having a \$160 consolidated net operating loss for Year 2, \$100 of which is carried back to Year 1. Under § 1.1502-21(b) and the principles of § 1.1502-79, \$50 of the loss tentatively carried back is attributable to S and \$50 is attributable to P. Consequently, under § 1.1502-32(b), P's basis in each share of S's stock is reduced from \$40 to \$35 and P recognizes a \$100 gain from the sale of the 2 shares.

(c) Under paragraph (b)(2)(ii) of this section, P's \$80 ordinary loss for Year 2 is not limited and the loss may offset a corresponding amount of P's \$100 gain from the sale of S's stock. Thus, the P group's consolidated taxable income for Year 2 is \$20:

Ordinary loss:	
P.....	\$(80)
S (\$80 loss not offset in Year 2).....	(0)
Sub Total.....	(80)
Consolidated net capital gain:	
P.....	100
S.....	0
Sub Total.....	100
Consolidated taxable income.....	20

(d) Because P's ordinary loss for Year 2 is fully absorbed in that year, only S's ordinary loss for Year 2 is carried back to Year 1. As described in paragraph (b) of this Example 3, only \$50 of S's loss may be carried back to Year 1, and the \$30 balance is carried forward as a separate net operating loss.

(3) **Loss dispositions**—(i) **General rule.** The principles of paragraph (b)(2) of this section apply to the extent necessary to carry out the purposes of paragraph (b)(1) of this section if P recognizes a loss from the disposition of S's stock. (ii) **Example.** The principles of this paragraph (b)(3) are illustrated by the following example.

Example. (a) On January 1 of Year 1, P has a \$400 basis in S's stock. During Year 1, P has a capital gain of \$100 (determined without taking P's gain or loss from the disposition of S's stock into account) and S has both a \$60 capital loss and a \$200 ordinary loss. On December 31 of Year 1, P sells S's stock for \$140.

(b) Under paragraph (b)(3) of this section, the amount of S's ordinary and capital losses that may offset income and gain is determined by tentatively computing the group's consolidated net operating loss and consolidated net capital loss without taking into account P's loss from the disposition of S's stock. The limitation is necessary to prevent P's loss from the disposition of S's stock from affecting the absorption of S's losses and thereby adjustments to P's basis in S's stock under § 1.1502-32(b) (which would, in turn, affect P's loss). Thus, the group is tentatively treated as having a \$40 consolidated net capital gain and a \$200 ordinary loss, which results in a \$160 consolidated net operating loss for Year 2, all of which is attributable to S under the principles of § 1.1502-79. As a result of the group's absorption of \$60 of S's capital loss and \$40 of S's ordinary loss, P's basis in S's stock is reduced under § 1.1502-32(b) from \$400 to \$300 immediately before the sale of S's stock, and P recognizes a \$160 loss from the sale. See, however, § 1.1502-20.

(4) **Multiple dispositions**—(i) **General rule.** If income, gain, or loss from a prior disposition of S's stock is deferred under any provision of law, the principles of this section apply to the income, gain, or loss to the extent that it is taken into account by members as a result of P's subsequent disposition of S's stock. In addition, if at the time of the disposition of S's stock S owns all of the stock of a

lower tier member (T), the limitation under paragraph (b)(2)(i) of this section with respect to T's deductions and losses is determined by not taking into account any income, gain, or loss recognized on the disposition of the stock of S or T.

(ii) **Examples.** The principles of this paragraph (b)(4) are illustrated by the following examples.

Example 1. Chain of subsidiaries. (a) P owns all of S's stock and S owns all of T's stock. On January 1 of Year 1, P's basis in S's stock and S's basis in T's stock are both \$500. During Year 1, P has ordinary income of \$30, S has no income or loss, and T has an \$80 ordinary loss. On December 31 of Year 1, P sells S's stock for \$520.

(b) Under paragraph (b)(4) of this section, to determine the limitation under paragraph (b) of this section on T's loss, and the effect of the absorption of T's loss on P's basis in S's stock under § 1.1502-32(b), P's gain or loss recognized on the disposition of S's stock is not taken into account by any member. Thus, the group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus T's \$80 loss). Because only \$30 of T's loss offsets income or gain, P's basis in S's stock is reduced under § 1.1502-32(b) from \$500 to \$470 immediately before the disposition of S's stock. Consequently, P recognizes a \$50 gain from the sale of S's stock.

(c) The facts are the same as in paragraph (a) of this Example 1, except that S has a \$10 excess loss account in T's stock rather than a \$500 basis. Under paragraph (b)(4) of this section, neither P's gain or loss from the disposition of S's stock nor S's gain or loss from the disposition of T's stock (under § 1.1502-19) are taken into account for purposes of the tentative computations and the effect of any absorption under § 1.1502-32(b) on P's basis in S's stock and S's excess loss account in T's stock. Thus, the group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus T's \$80 loss), and only \$30 of T's loss may offset the group's income or gain. Under § 1.1502-32(b), the absorption of \$30 of T's loss increases S's excess loss account in T's stock to \$40 and, under § 1.1502-19, the excess loss account is taken into account. Moreover, under § 1.1502-32(b), P's basis in S's stock is increased immediately before the sale by \$10 (S's \$40 gain under § 1.1502-19(b) minus T's \$30 loss absorbed and tiered up under § 1.1502-32(b)), from \$500 to \$510. Consequently, P recognizes a \$10 gain from the sale of S's stock, and S recognizes a \$40 gain from the inclusion in income of its excess loss account in T's stock.

Example 2. Brother-sister subsidiaries. (a) P owns all of the stock of S1 and S2. On January 1 of Year 1, P has a \$50 basis in the stock of each. During Year 1, the group has a \$100 consolidated net operating loss (under the principles of § 1.1502-79, \$50 attributable to S1 and \$50 to S2) determined without taking gain or loss from the disposition of member stock into account. On December 31 of Year 1, P sells the stock of S1 and S2 for \$100 each.

(b) Paragraph (b)(4) of this section does not apply to the loss of S1 or S2 with respect to the disposition of stock of the other. Consequently, each subsidiary's loss may offset P's gain from the disposition of the stock of the other subsidiary. Because this absorption results in a \$50 reduction in P's basis in the stock of each subsidiary under § 1.1502-32(b), P's aggregate gain from the stock dispositions is increased from \$100 to \$200, \$100 of which is offset by the losses of the subsidiaries.

(5) *Effective date.* This paragraph (b) applies to consolidated return years beginning on or after [the date the final regulations are filed with the Federal Register]. For prior years, see § 1.1502-11(b) (as contained in the CFR edition revised as of April 1, 1992).

Par. 6. Section 1.1502-13 is amended by revising paragraph (c)(1)(iii) and *Example (17)* (ii) of paragraph (h) to read as follows:

§ 1.1502-13 Intercompany transactions.

* * * * *

(c) * * *

(1) * * *

(iii) See paragraphs (d), (e), and (f) of this section, relating to the time and manner of restoring deferred gain or loss. See § 1.1502-13T, relating to the time and manner of restoring deferred gain or loss in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990.

* * * * *

(h) * * *

Example (17). * * *

(ii) P takes the entire \$44,000 gain (\$104,000 less \$60,000) on the land into account for 1966 since the deferral rules provided in paragraph (c) of this section were not effective with respect to the sale of such land.

* * * * *

§ 1.1502-14 [Amended]

Par. 7. Section 1.1502-14 is amended by revising the last sentence in the Example in paragraph (a)(4) to read "P's basis in the land is \$6,000."

Par. 8. Section 1.1502-19 is revised to read as follows:

§ 1.1502-19 Excess loss accounts.

(a) *In general.*—(1) *Purpose.* This section provides rules for including in income the excess loss account of one member (P) in the stock of another member (S). The purpose of an excess loss account is to recapture the group's use of S's deductions and losses with respect to a share, and the group's exclusion of S's distributions with respect to the share, to the extent they exceed P's basis in the share.

(2) *General principles.* The rules of this section and other applicable provisions of law must be applied in a

manner that is consistent with and reasonably carries out the purposes of this section. For example, a determination or adjustment must not have the effect of duplicating an item in P's excess loss account in S's stock. In the absence of specific guidance, determinations and adjustments must be made in a manner that reflects all of the facts and circumstances, the underlying economic arrangement, applicable federal tax accounting principles, and the purpose stated in paragraph (a)(1) of this section.

(3) *Application of other provisions of law.* The rules of this section are in addition to rules under other provisions of law that are not inconsistent with this section. See § 1.1502-32 for investment adjustment rules establishing and adjusting excess loss accounts and for definitions that apply under this section.

(b) *Realization of income.*—(1) *General rule.* If P is treated under this section as disposing of a share of S's stock, P's excess loss account in the share is taken into account as an amount realized by P from the disposition. Except as provided in paragraph (b)(4) of this section, the disposition is treated as a sale or exchange for purposes of determining the character of the amount realized.

(2) *Nonrecognition or deferral.*—(i) *In general.* P's income or gain under paragraph (b)(1) of this section from a disposition under paragraph (c)(1)(i) of this section (relating to P ceasing to own a share) is subject to any nonrecognition or deferral rules applicable to the disposition. For example, if P's stock in S is redeemed in a liquidation to which section 332 applies, or P transfers all of its assets (including S's stock) to S in a reorganization to which section 361(a) applies, P's disposition is subject to these nonrecognition rules and P's income or gain is not recognized.

(ii) *Nonrecognition or deferral inapplicable.* If P's disposition is described in Paragraph (c)(1) (ii) or (iii) of this section (relating to deconsolidations and worthlessness), whether or not the disposition is also described in paragraph (c)(1)(i) of this section, P's income or gain under paragraph (b)(1) of this section is taken into account notwithstanding any nonrecognition or deferral rules to the contrary. For example, if P transfers S's stock to a nonmember in a transaction to which section 351 applies, P's gain attributable to the excess loss account is recognized on the transfer.

(3) *Tiering up in chains.* If the stock of more than one subsidiary is disposed of in the same transaction, paragraph (c) of this section is applied in the order of the tiers, from the lowest to the highest.

(4) *Insolvency.* P's gain under this section is treated as ordinary income to the extent of the lesser of—

(i) The amount by which S is insolvent (within the meaning of section 108(d)(3)) on the date of the disposition; or

(ii) P's excess loss account, redetermined without taking into account distributions with respect to S's stock under § 1.1502-32(b)(3)(iv). For purposes of determining S's insolvency, liabilities include the amount of preferred distributions to which holders of preferred stock would be entitled if S were liquidated on the date of the disposition, and former liabilities that were discharged but not taken into account as tax-exempt income by reason of § 1.1502-32(b)(4)(ii)(C) (special rule for discharges).

(c) *Disposition of stock.* For purposes of this section—

(1) *In general.* P is treated as disposing of a share of S's stock—

(i) *Transfer, cancellation, etc.* When P ceases to own the share, or on the occurrence of any other event in which P recognizes gain or loss (in whole or in part) with respect to the share.

(ii) *Deconsolidation.* When—

(A) P becomes a nonmember, or a nonmember determines its basis in the share (or any other asset) by reference to P's basis in the share, directly or indirectly, in whole or in part (e.g., under section 362); or

(B) S becomes a nonmember, or P's basis in the share is reflected, directly or indirectly, in whole or in part, in the basis of any asset other than member stock (e.g., under section 1071).

(iii) *Worthlessness.* On any day that—

(A) Substantially all of S's assets are treated as disposed of, abandoned, or destroyed within the meaning of section 165(a); or

(B) an indebtedness of S is discharged, if the amount discharged and excluded from gross income under section 108(a) exceeds the amount of tax attributes reduced under sections 108(b) and 1017 as a result of the exclusion. For purposes of this paragraph (c)(1)(iii), S's assets are considered to be disposed of if they are maintained for the principal purpose of avoiding a disposition of S's stock. See also § 1.1502-80(c) (deferring the treatment of stock of members as worthless under section 165(g)).

(2) *Becoming a nonmember.* For purposes of paragraph (c)(1)(ii) of this section, a member is treated as becoming a nonmember if it has a separate return year (including another group's consolidated return year). A disposition under paragraph (c)(1)(ii) of this section must be taken into account in the consolidated return of the group.

For example, if paragraph (c)(1)(ii) of this section applies because, under § 1.1502-75(c), a group ceases to file a consolidated return as of the close of its consolidated return year, the disposition under paragraph (c)(1)(ii) of this section is treated as occurring immediately before the close of the year. If S becomes a nonmember because P sells S's stock to a nonmember, P's sale is a disposition under both paragraphs (c)(1)(i) and (ii) of this section. If a group ceases to exist because the former common parent is the only remaining member, the former common parent is not treated as having a deconsolidation event under paragraph (c)(1)(ii) of this section.

(3) *Exception for acquisition of group.* Paragraph (c)(1) of this section does not apply solely by reason of the termination of a group because it is acquired, if there is a surviving group that is, immediately thereafter, a consolidated group. This paragraph (c)(3) applies only if the terminating group ceases to exist as a result of an acquisition of the assets of its common parent in a reorganization to which section 381(a)(2) applies or an acquisition of the stock of the common parent, or the group ceases to exist under the principles of § 1.1502-75 (d)(2) or (d)(3). However, this paragraph (c)(3) does not apply to the extent members of the terminating group do not become members of the succeeding group (e.g., under section 1504(c), relating to includible insurance companies).

(d) *Determinations or adjustments to basis—(1) General rule.* For purposes of determining or adjusting the basis of stock, an excess loss account is treated as a negative amount included in the determination of basis.

(2) *Determinations of basis.* If the basis of stock of a member (or any other asset) is determined by reference to P's basis in S's stock, any resulting negative amount is treated as an excess loss account. For example, if P transfers S stock to another member in an exchange to which section 354 applies, P's excess loss account in the S stock that it surrenders in the exchange is applied under section 358 to determine P's basis (or excess loss account) in stock of the acquiring corporation that P receives in the exchange or P already owns, as well as applied under section 362 to determine the acquiring corporation's excess loss account in the S stock.

(3) *Adjustments to basis.* Adjustments to P's basis (or excess loss account) in S's stock are made under § 1.1502-32 and other applicable provisions of law. Any resulting negative amount is treated as an excess loss account in that stock. For example, if P owns all of S's stock

with a \$0 basis, and makes a capital contribution to S of property with a \$100 adjusted basis (and \$175 fair market value) that is subject to a \$150 liability, the \$50 excess of liability over basis results in a \$50 negative adjustment to P's basis in S's stock under section 358 and is treated as an excess loss account. See § 1.1502-80(e) for the non-applicability of section 357(c).

(4) *Special allocation of basis adjustment or determination.* If P has an excess loss account in any share of S's stock, basis adjustments or determinations under the Internal Revenue Code with respect to S's stock of the same class owned by P are first allocated among P's shares in the class to equalize and then eliminate the excess loss account. For example, if P owns 100 shares of S's only class of stock, 50 with a \$100 basis and 50 with a \$100 excess loss account, and P makes a \$200 capital contribution to S, the contribution first eliminates P's excess loss account. (If P contributes the \$200 in exchange for an additional 100 shares of S's stock in a transaction to which section 351 applies, P's excess loss account is eliminated before P's basis in any shares is increased.) See § 1.1502-32(c) for similar allocations of investment adjustments to prevent or eliminate excess loss accounts.

(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, P owns all of S's stock and S owns all of T's stock for the entire year, S and T have only one class of stock outstanding, T owns no stock of lower tier members, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this section are illustrated by the following examples.

Example 1. Sale of Stock. (a) On January 1 of Year 1, P has a \$150 basis in S's stock, and S has a \$100 basis in T's stock. During Year 1, P has \$500 of ordinary income, S has no income or loss, and T has a \$200 ordinary loss. On December 31 of year 1, S sells T's stock to a nonmember for \$60. Immediately before the sale, under § 1.1502-32(b), S decreases its basis in T's stock to zero and establishes a \$100 excess loss account in T's stock.

(b) Under paragraph (c) of this section, S is treated as disposing of its stock on December 31 of Year 1 (the day of the sale). Under paragraph (b)(1) of this section, the excess loss account is treated as an additional \$100 realized by S from the sale. Consequently, S recognizes a \$160 gain from the sale, which is taken into account in determining the group's consolidated taxable income. Under § 1.1502-32(b), T's \$200 loss and S's \$160 gain result in a \$40 decrease in

P's basis in S's stock as of the close of Year 1, from \$150 to \$110.

(c) The facts are the same as in paragraph (a) of this *Example 1*, except that S sells T's stock to P for \$60 on December 31 of Year 1 and P sells T's stock to a nonmember at a gain on January 1 of Year 5. S is treated as disposing of T's stock on December 31 of Year 1, and the excess loss account in T's stock is treated as an additional \$100 realized by S from the sale. However, under § 1.1502-13 and paragraph (b)(2)(i) of this section, S's \$160 gain is deferred and taken into account in Year 5 when P sells T's stock. Thus, as of the close of Year 1, under § 1.1502-32(b), the absorption of T's \$200 loss results in P decreasing its basis in S's stock to zero and establishing a \$50 excess loss account. Under § 1.1502-32(b), as of the close of Year 5, S's \$160 gain eliminates P's \$50 excess loss account in S's stock and increases P's basis in the stock to \$110.

Example 2. Spin-off of stock. (a) On December 31 of Year 1, P has a \$50 excess loss account in S's stock, and S has a \$100 excess loss account in T's stock. On that day, S distributes T's stock to P in a transaction to which section 355 applies and on which no gain or loss is recognized. At the time of the distribution, T's stock represents one-half of the value of S's stock.

(b) Under paragraph (c) of this section, S is treated as disposing of T's stock on December 31 of Year 1 (the day of the distribution). Under section 355 and paragraph (b)(2)(i) of this section, S does not recognize any gain from the disposition. Under paragraph (d) of this section, S's excess loss account in T's stock is eliminated, and P's \$50 excess loss account in S's stock is treated as a negative amount allocated under section 358 between S's stock and T's stock following the distribution. Consequently, P has a \$25 excess loss account in S's stock and a \$25 excess loss account in T's stock.

(c) Assume, instead, that P has a \$50 excess loss account in S's stock, S has no lower tier subsidiaries, P distributes S's stock to P's shareholders on December 31 of Year 1 in a transaction to which section 355 applies, and the distribution causes S to become a nonmember. Under paragraph (c) of this section, P is treated as disposing of S's stock on December 31 of Year 1 (the day of the distribution). Under paragraph (b)(2)(ii) of this section, because P's disposition is described in paragraph (c)(1)(ii) of this section, P's \$50 gain from the disposition must be taken into account in the determination of the group's consolidated taxable income notwithstanding the nonrecognition rules of section 355.

Example 3. Deconsolidation. (a) On December 31 of Year 1, P has a \$50 excess loss account in S's stock, and S has a \$100 excess loss account in T's stock. On that day, T issues additional stock to a nonmember and, as a consequence, T becomes a nonmember.

(b) Under paragraph (c) of this section, S is treated as disposing of T's stock on December 31 of Year 1 (the day T becomes a nonmember). Under paragraph (b)(1) of this section, S is treated as realizing \$100 from the sale or exchange of T's stock. Under § 1.1502-

32(b), S's \$100 gain from the disposition of T's stock eliminates P's excess loss account in S's stock and increases P's basis in S's stock to \$50.

(c) The facts are the same as in paragraph (a) of this *Example 3*, except that S (rather than T) issues the stock and, as a consequence, both S and T become nonmembers on December 31 of Year 1. Under paragraph (c) of this section, P is treated as disposing of S's stock and S is treated as disposing of T's stock. Under paragraph (b)(3) of this section, because both S and T become nonmembers in the same transaction and T is the lower tier member, S is first treated under paragraph (b)(1) of this section as realizing \$100 from the sale or exchange of T's stock. Under § 1.1502-32(b), S's \$100 gain from the disposition of T's stock eliminates P's excess loss account in S's stock and increases P's basis in S's stock to \$50. Consequently, S's \$100 gain from the disposition of T's stock is taken into account in the determination of the group's consolidated taxable income, but P's excess loss account in S's stock is eliminated immediately before P's disposition of S's stock.

(d) The facts are the same as in paragraph (c) of this *Example 3*, except that T has \$30 of gain that has been deferred under § 1.1502-13 and is taken into account in determining consolidated taxable income immediately before T becomes a nonmember. Under § 1.1502-32, T's \$30 gain decreases S's excess loss account in T's stock from \$100 to \$70 immediately before S is treated as disposing of T's stock. Under paragraph (b)(1) of this section, S is treated as recognizing \$70 from the disposition of T's stock. Thus, under § 1.1502-32(b), P's excess loss account in S's stock is eliminated, and P's basis in S's stock is increased from \$0 to \$50 immediately before S ceases to be a member.

Example 4. Reorganization within the group. (a) P owns all of the stock of S and T. On December 31 of Year 1, P has a \$150 basis in S's stock, and P has a \$100 excess loss account in T's stock. On that day, P transfers T's stock to S without receiving additional S stock in a transaction to which section 351 applies.

(b) Under paragraph (c) of this section, P is treated as disposing of T's stock on December 31 of Year 1 (the day of the transfer). Under section 351 and paragraph (b)(2) of this section, P does not recognize gain from the disposition. Under section 358 and paragraph (d) of this section, P's \$100 excess loss account in T's stock decreases P's basis in S's stock from \$150 to \$50. In addition, under section 362 and paragraph (d) of this section, S has a \$100 excess loss account in T's stock.

(c) The facts are the same as in paragraph (a) of this *Example 4*, except that T merges into S in a reorganization to which section 368(a)(1)(A) applies (and is also described in section 368(a)(1)(D)), and P receives no additional S stock in the reorganization. Under paragraph (b) of this section, P does not recognize gain. Instead, P's \$100 excess loss account in T's stock decreases P's \$150 basis in the S stock that P owns before the merger to \$50. Similarly, if S merges into T and P does not receive additional T stock, P's

\$150 basis in S's stock eliminates P's excess loss account in T's stock, and increases P's basis in T's stock to \$50.

Example 5. Worthlessness. (a) On January 1 of Year 1, P forms S with a \$150 capital contribution. During Year 1, the P group has a \$50 consolidated net operating loss (under the principles of § 1.1502-79, entirely attributable to S). During Year 2, P has \$160 of ordinary income, and S borrows \$150 and has a \$160 ordinary loss. Under § 1.1502-32(b), P's basis in S's stock is reduced to zero and P has a \$10 excess loss account in S's stock. During Year 3, the value of S's assets (without taking S's liabilities into account) continues to decline and S's stock becomes worthless within the meaning of section 165(g) (without taking into account § 1.1502-80(c)). During Year 4, S earns \$10 of ordinary income.

(b) Under paragraph (c)(1)(iii)(A) of this section, P is treated as disposing of S's stock on any day that substantially all of S's assets are treated as disposed of, abandoned, or destroyed within the meaning of section 165(a). Thus, P is not treated as disposing of S's stock during Year 3 solely because of the worthlessness of S's stock, provided that S does not maintain its assets for the principal purpose of avoiding a disposition of its stock. Because S's stock is not treated under paragraph (c) of this section as worthless, this section does not cause section 382(g)(4)(D) to apply in Year 3, and S's net operating loss carryover may offset S's \$10 of income in Year 4.

(c) Assume the same facts as in paragraph (a) of this *Example 5*, except that, instead of S's stock becoming worthless within the meaning of section 165(g), S's creditor discharges \$40 of S's indebtedness during Year 3 and S is insolvent by \$60. The discharge is excluded from the P group's gross income under section 108(a), and \$40 of S's \$50 net operating loss carryover is eliminated under section 108(b). Under paragraph (c)(1)(iii)(B) of this section, P is treated as disposing of S's stock if the amount discharged and excluded from gross income under section 108(b) exceeds the amount of tax attributes reduced under sections 108(b) and 1017 as a result of the exclusion. Because the \$40 discharge does not exceed the \$40 attribute reduction, P is not treated as disposing of S's stock during Year 3 by reason of the discharge. Moreover, because S's stock is not treated under paragraph (c) of this section as worthless, this section does not cause section 382(g)(4)(D) to apply in Year 3, and S's net operating loss carryover may offset S's \$10 of income in Year 4. See § 1.1502-32(b)(4)(ii)(C) (special investment adjustment rules for discharge of indebtedness).

(f) **Predecessors and successors.** For purposes of this section, any reference to a corporation or to a share includes a reference to a successor or predecessor as the context may require. See § 1.1502-32(f) for definitions of predecessor and successor.

(g) **Effective date—(1) Application.** This section applies with respect to determinations (as provided under § 1.1502-32) on or after [the date the final regulations are filed with the

Federal Register]. If this section applies, basis and excess loss accounts must be determined or redetermined as if this section were in effect for all consolidated return years of the group. For this purpose, if P and S cease to be members of one consolidated group and, under paragraph (c)(3) of this section (or its equivalent under prior law), P is not treated as disposing of S's stock, the consolidated return years of the terminating group are also taken into account.

(2) **Dispositions of stock before effective date.** If P disposes of stock of S before [the date the final regulations are filed with the **Federal Register**], the amount of P's income, gain, or loss is not redetermined. In addition, to the extent that P's determinations or adjustments with respect to S's stock were taken into account in determining P's income, gain, or loss, the determinations or adjustments are not redetermined.

(3) **Deferred amounts.** For purposes of this paragraph (g), a disposition to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies is deemed to occur at the time the income, gain, or loss is taken into account.

(4) **Worthlessness.** Paragraph (c)(1)(iii) of this section (and not the prior rules relating to worthlessness) applies to consolidated return years ending on or after [the date the final regulations are filed with the **Federal Register**]. For this purpose, the prior worthlessness rules are § 1.1502-19(b)(2) (iii), (iv), and (v) (as contained in the CFR edition revised as of April 1, 1992).

(5) **Prior law.** For prior determinations, see prior regulations issued under section 1502 of the Internal Revenue Code as in effect with respect to the determination.

Par. 9. Section 1.1502-20 is amended as follows:

1. Paragraphs (a)(1) and (a)(3)(ii) are revised.
2. The last sentence of paragraph (a)(4) is removed.
3. The introductory text in paragraph (a)(5) is revised.
4. In paragraph (a)(5), the last sentence of paragraph (iii) of *Example 6* is revised.
5. The last sentence of paragraph (b)(4) is removed.
6. In paragraph (b)(6), the last sentence of paragraph (iv) in *Example 5* is revised.
7. Paragraphs (c)(1) (i) and (ii) are revised.
8. Paragraphs (c)(2)(i) (A)(1), (B), and (D) are revised.

The first sentence of the concluding text of paragraph (c)(2)(i) appearing

immediately after paragraph (c)(2)(i)(D) is revised.

10. Paragraphs (c)(2) (ii) and (iii) are revised.

11. In paragraph (c)(4), paragraphs (ii) and (iii) of *Example 1*, *Example 2*, paragraphs (ii) and (iii) of *Example 3*, paragraph (ii) of *Example 6*, and paragraph (ii) of *Example 7* are revised, and paragraph (iii) of *Example 7* is removed.

12. Paragraph (f) is revised.

13. Paragraph (g)(3) is removed, and paragraph (g)(4) is redesignated as paragraph (g)(3).

14. Newly designated paragraph (g)(3) is amended by revising paragraphs (i) and (iii) of *Example 1*, paragraphs (i) and (iv) of *Example 2*, and paragraph (iv) of *Example 3*.

15. The revised provisions read as follows:

§ 1.1502-20 Loss disallowance.

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary. See also §§ 1.1502-11(c) (stock losses attributable to certain pre-1966 distributions) and 1.1502-80(c) (deferring the treatment of stock of members as worthless under section 165(g)).

(3) * * *

(ii) *Overriding events.* For purposes of paragraph (a)(3)(i) of this section, the following are overriding events:

(A) The stock ceases to be owned by a member of the consolidated group or the issuer becomes a nonmember. For this purpose, a member is treated as becoming a nonmember on the first day of its first separate return year (including another group's consolidated return year).

(B) The stock is cancelled or redeemed (regardless of whether it is retired or held as treasury stock).

(C) The stock is treated as disposed of under § 1.1502-19(c)(1)(iii).

(5) *Examples.* For purposes of the examples in this section, unless otherwise stated, all corporations have only one class of stock outstanding, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. References to the "investment adjustment system" are references to the rules of §§ 1.1502-19, 1.1502-32 and

1.1502-33. The principles of this paragraph (a) are illustrated by the following examples.

* * * * *

Example 6. * * *

(iii) * * * However, P's \$60 loss from the disposition of the T stock is disallowed under paragraph (a)(1) of this section, because T's \$60 gain from the sale of its asset is gain from an extraordinary gain disposition that is indirectly reflected in P's basis in the T stock immediately before P's disposition of the T stock.

(b) * * *

(6) * * *

Example 5. * * *

(iv) * * * However, the subsequent deconsolidation of S is an overriding event under paragraph (a)(3)(ii) of this section, and paragraph (a)(1) of this section applies to the loss immediately before the deconsolidation.

* * * * *

(c) * * *

(1) * * *

(i) *Extraordinary gain dispositions.* The member's income or gain (or its equivalent), net of directly related expenses, from extraordinary gain dispositions allocated to the share.

(ii) *Positive investment adjustments.* The amount of any positive adjustment with respect to the share under § 1.1502-32, but only to the extent the amount for a consolidated return year exceeds the amount described in paragraph (c)(1)(i) of this section for the same consolidated return year.

* * * * *

(2) * * *

(i) * * *

(A) * * *

(1) A capital asset as defined in section 1221 (determined without the application of any other provision of law).

* * * * *

(B) A positive section 481 (a) adjustment.

* * * * *

(D) Any other event (or item) identified by guidance published in the Internal Revenue Bulletin.

An extraordinary gain disposition is taken into account under paragraph (c)(1)(i) of this section only if it occurs on or after November 19, 1990 and results, net of directly related expenses, in income or gain that is taken into account under § 1.1502-32 (or other applicable stock basis adjustment). * * *

(ii) *Positive investment adjustments.* For purposes of paragraph (c)(1)(ii) of this section, a positive adjustment under § 1.1502-32(b) is the sum of the amounts under § 1.1502-32(b)(3) (i) through (iii) for the consolidated return year (or other applicable period), taking tax

losses into account under § 1.1502-32(b)(3)(i) only in the year they arise.

(iii) *Applicable amounts.* Amounts are described in paragraphs (c)(1) (i) and (ii) of this section only to the extent they are reflected in the basis of the share, directly or indirectly, immediately before the disposition or deconsolidation, after applying § 1.1502-32 and other applicable provisions of law.

* * * * *

(4) * * *

Example 1. Allowable loss attributable to lost built-in gain. * * *

(ii) The amount of the \$100 loss disallowed under paragraph (a)(1) of this section may not exceed the amount determined under paragraph (c)(1) of this section. Under paragraphs (c)(2) (i) and (iii) of this section, T's \$40 gain is from an extraordinary gain disposition and the amount is reflected in the basis of the T stock under § 1.1502-32 immediately before the disposition. Thus, the gain is described in paragraph (c)(1)(i) of this section. Because this amount is the only amount described in paragraph (c)(1) of this section, the amount of P's \$100 loss that is disallowed under paragraph (a)(1) of this section is limited to \$40. (No amount is described in paragraph (c)(1)(ii) of this section because the amount of T's positive investment adjustments does not exceed the amount included under paragraph (c)(1)(i) of this section.)

(iii) The results would be the same if the asset, instead of being owned by T, is owned by a partnership in which T is a partner and T is allocated the \$40 of gain under section 704(b). Under paragraphs (c)(2) (i) and (iii) of this section, T's \$40 gain is from an extraordinary gain disposition, and the gain is reflected in the basis of the T stock under § 1.1502-32(b) immediately before the disposition.

Example 2. Extraordinary gain dispositions. (i) Individual A forms T. P buys all the stock of T from A for \$100 in Year 1, and T becomes a member of the P group. T owns a capital asset, asset 1, with a basis of \$0 and a value of \$100. T sells asset 1 for \$100 in Year 1 and invests the proceeds in a trade or business asset, asset 2. During Year 2, asset 2 produces \$30 of gross operating income and \$20 of cost recovery deductions. On December 31 of Year 2, asset 2 has an \$80 adjusted basis and T disposes of asset 2 for \$85; however, because T incurs \$20 of expenses directly related to the sale of asset 2, the disposition produces a \$15 loss that is taken into account in the determination of taxable income or loss under § 1.1502-32(b)(3)(i) (the loss offsets T's \$10 of operating income for Year 2, as well as \$5 of operating income of P in that year). Under the investment adjustment system, P's basis in the T stock increases by \$95, to \$195, because T has \$110 of income and a \$15 loss. P sells the T stock for \$95 in Year 5 and recognizes a \$100 loss.

(ii) Under paragraphs (c)(2) (i) and (iii) of this section, the \$100 gain from the disposition of asset 1 is from an extraordinary gain disposition and is

reflected in the basis of the T stock. Thus, the gain is described in paragraph (c)(1)(i) of this section. The sale of asset 2 is not an extraordinary gain disposition because, under paragraph (c)(2)(i) of this section, that sale did not result in income or gain when determined net of directly related expenses. (No amount is described under paragraph (c)(1)(ii) of this section because T's positive investment adjustments are taken into account under paragraph (c)(1)(i) of this section.) Because the \$100 amount described under paragraph (c)(1)(i) of this section equals P's \$100 loss from the disposition of the T stock, all of the loss is disallowed.

Example 3. ***

(ii) Under paragraph (c)(1)(ii) of this section, the \$100 of income from Year 1 is a positive investment adjustment. The amount is not reduced by the \$25 operating deficit for Year 2. Because the \$100 amount described under paragraph (c)(1)(ii) of this section equals S's \$100 loss from the disposition of the T stock, all of the loss is disallowed.

(iii) Under paragraph (c)(2)(iv) of this section, the results would have been the same if, prior to the decline in the value of the first asset (the value of the T stock was \$200, \$100 cash and a \$100 asset), S had sold the T stock to P for \$200 at no gain or loss, and P then sold the T stock to the unrelated buyer for \$75 (after the \$100 decline in the value of the asset and the \$25 operating deficit) and recognized a \$100 loss. T had \$100 of income that resulted in a positive adjustment under the investment adjustment system and is reflected, within the meaning of paragraph (c)(2)(iii) of this section, in the basis of the T stock. The income and investment adjustments with respect to the T stock are not reduced or eliminated for purposes of paragraph (c)(1)(ii) of this section by reason of P's purchase of the stock, because P is a person related to S within the meaning of section 267(b).

Example 6. ***

(ii) Although T has a \$100 gain from extraordinary gain dispositions, the gain is not reflected in P's basis in the T stock within the meaning of paragraph (c)(2)(iii) of this section. P's basis reflects the stock's value at the time of P's purchase, and is determined without regard to whether T recognized the gain before the purchase. Thus, no part of T's gain is described in paragraph (c)(1) of this section, and no part of the \$20 loss is disallowed under paragraph (a) of this section. (For rules that apply if A and P are related persons, see paragraph (c)(2)(iv) of this section.)

Example 7. Adjustments to stock basis under applicable provisions of law. ***

(ii) Under paragraph (c)(2)(i) of this section, the discharge of indebtedness is an extraordinary gain disposition. Under section 1503(e)(1)(B) and § 1.1502-32(b)(4)(ii), however, the \$200 discharge of indebtedness is not reflected in P's basis in the T stock. Consequently, under paragraph (c)(2)(iii) of this section, when P disposes of the T stock, there is no amount under paragraph (c)(1) of this section. Thus, P's \$100 loss from the disposition is not disallowed under paragraph (a) of this section.

(f) *Investment adjustments and earnings and profits*—(1) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share for purposes of determining when investment adjustments are made and earnings and profits are determined with respect to the share.

(2) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary (S) owned by a another member (P) is reduced under this section on the deconsolidation of the S stock, no corresponding adjustment is made under § 1.1502-32 to the basis of the stock of P, or under § 1.1502-33 to P's earnings and profits, if there is a disposition or deconsolidation of the P stock in the same transaction. If there is a disposition or deconsolidation in the same transaction of less than all the stock of P, appropriate adjustments must be made under §§ 1.1502-32 and 1.1502-33 with respect to P (and any higher tier members).

(3) *Example.* The principles of this paragraph (f) are illustrated by the following example.

Example. (i) P, the common parent of a group, owns all the stock of S. S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in the S stock is \$100, S's basis in the S1 stock is \$100, and S1's basis in the S2 stock is \$100. In Year 1, S2 buys all the stock of T for \$100. T has an asset with a basis of \$0 and a value of \$100. In Year 2, T sells the asset for \$100. Under the investment adjustment system, the basis of each subsidiary's stock increases from \$100 to \$200. In Year 6, S sells all the stock of S1 for \$100 to A, an individual, and recognizes a loss of \$100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(ii) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss from the sale of the S1 stock. Under § 1.1502-32(b)(4)(iii), S's disallowed loss is treated as a noncapital, nondeductible expense for Year 6 that reduces P's basis in the S stock. Under § 1.1502-33, S's earnings and profits for Year 6 are reduced by the amount of S's disallowed loss for earnings and profits purposes and, under § 1.1502-33(b), this reduction is reflected in P's earnings and profits.

(iii) Under paragraphs (b)(1) and (f)(1) of this section, because the stock of T and S2 are deconsolidated as a result of S's sale of the S1 stock, the basis of their stock must be reduced from \$200 to \$100 (the value immediately before the deconsolidation), and the earnings and profits of S2 and S1 must be reduced, immediately before the sale. Under § 1.1502-32(b)(4)(iii), the basis reductions are treated as noncapital, nondeductible expenses for Year 6. Under paragraph (f)(2) of this section, however, because the S2 stock is deconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to S1's basis in the S2 stock or to S1's earnings and profits. Similarly, because the stock of S1

stock is disposed of in the same transaction, the basis reduction to the S2 stock does not cause any corresponding investment adjustment to S's basis in the stock of S1 stock or to S's earnings and profits.

(g) ***

(3) ***

*Example 1. **** (i) P, the common parent of a group, forms S with a \$100 contribution. For Year 1, each member of the P group has an ordinary loss, and, under the principles of § 1.1502-79, \$60 of the group's consolidated net operating loss is attributable to S. Under § 1.1502-32(b)(4)(i), P's basis in the S stock is not reduced to reflect S's loss because the group is unable to absorb the loss. Under § 1.1502-33(b), S's deficit in earnings and profits is reflected in P's earnings and profits even though the loss is not absorbed for tax purposes. During Year 2, S's remaining assets appreciate in value and P sells the S stock for \$55. But for an election to reattribute losses under paragraph (g) of this section, P would have a \$45 loss from the sale that would be disallowed.

(iii) Under § 1.1502-32(b)(4)(ii)(B), the reattribution of \$45 of loss reduces P's basis in the S stock from \$100 to \$55, immediately before the disposition. Consequently, P does not recognize any gain or loss from the disposition.

*Example 2. **** (i) P, the common parent of a group, forms S with a \$100 contribution. S then forms T with a \$40 contribution and T borrows \$60. For Year 1, each member of the P group has an ordinary loss, and, under the principles of § 1.1502-79, \$55 of the group's consolidated net operating loss is attributable to T and \$30 is attributable to S. Under § 1.1502-32(b)(4)(i), P's basis in the S stock, and S's basis in the T stock, are not reduced to reflect the S and T losses because the group is unable to absorb the losses. Under § 1.1502-33(b), T's deficit in earnings and profits is reflected in the earnings and profits of S and P even though the loss is not absorbed for tax purposes. Similarly, S's deficit in earnings and profits is reflected in the earnings and profits of P even though the loss is not absorbed for tax purposes. During Year 2, T becomes insolvent by \$15, and P sells the S stock for \$30 (\$100 invested, minus S's \$30 loss and \$40 unrealized loss from its investment in the T stock). But for an election to reattribute losses under paragraph (g) of this section, P would have a \$70 loss from the sale, which would be disallowed.

(iv) Under § 1.1502-32(b)(4)(ii)(B), the reattribution reduced P's basis in the S stock to \$60 immediately before the disposition. Consequently, P recognizes only a \$30 loss from disposition of its S stock (\$30 sale proceeds and \$60 basis), and this loss is disallowed.

Example 3. ***

(iv) Under § 1.1502-32(b)(4)(ii)(B), the reattribution reduces P's basis in the S stock to \$60 immediately before the disposition.

Consequently, P recognizes no gain or loss from the disposition of its S stock.

Par. 10. Section 1.1502-31 is revised to read as follows:

§ 1.1502-31 Stock basis after a group structure change.

(a) *In general*—(1) *Overview*. This section provides rules for adjusting the basis of members in the stock of the former common parent if another corporation succeeds as the common parent of the consolidated group in a group structure change under § 1.1502-33 (f). For example, if a corporation (P) owns all of the stock of another corporation (S), and the former common parent (T) merges into S in a group structure change to which section 368 (a)(2)(D) applies, P's basis in S's stock must reflect the change in S's assets and liabilities. The rules of this section coordinate with P's earnings and profits adjustments required under § 1.1502-33 (f) and preserve in P the relationship between T's earnings and profits and T's basis in its assets.

(2) *General principles*. The rules of this section and other applicable provisions of law must be applied in a manner that is consistent with and reasonably carries out the purposes of this section. For example, a determination or adjustment must not have the effect of duplicating an item in the basis of S's stock. The principles of this section apply whether or not the former common parent continues to exist after the group structure change, and references to S include, as the context may require, references to T. In addition, references in this section to basis include, as the context may require, references to an excess loss account and, if adjustments to the basis of stock result in a negative amount, the negative amount is treated as an excess loss account.

(3) *Application of other provisions of law*. The rules of this section are in addition to rules under other provisions of law that are not inconsistent with this section. See, e.g., § 1.358-6 (stock basis in certain triangular reorganizations).

(b) *General rules*. Except as otherwise provided in this section—

(1) *Asset acquisitions*. If a corporation acquires the former common parent's assets (and any liabilities assumed or to which the assets are subject) in a group structure change, the basis of members in the stock of the acquiring corporation is adjusted immediately after the group structure change to reflect the acquiring corporation's allocable share of the former common parent's net asset basis. For example, if S acquires T's assets in a group structure change to which section

368(a)(2)(D) applies, P's basis in S's stock is adjusted to reflect T's net asset basis. The result is the same if P owned some of T's stock before the group structure change; P's basis in the T stock is not taken into account in determining P's basis in S's stock. See § 1.358-6 for stock basis rules applicable to certain triangular reorganizations, which may already determine adjustments based on T's net asset basis.

(2) *Stock acquisitions*. If a corporation acquires stock of the former common parent in a group structure change, the corporation's basis in the former common parent's stock immediately after the group structure change (including any stock of the former common parent owned before the group structure change) is adjusted to reflect the corporation's allocable share of the former common parent's net asset basis. For example, if all of T's stock is contributed to P in a group structure change to which section 351 applies, P's basis in T's stock is T's net asset basis. Similarly, if S merges into T in a group structure change to which section 368(a)(2)(E) applies, P's basis in T's stock is the same basis that P would have in S's stock under paragraph (b)(1) of this section if T had merged into S in a group structure change to which section 368(a)(2)(D) applies.

(c) *Net asset basis*. The former common parent's net asset basis is the basis it would have in the stock of a newly formed subsidiary, if—

(1) The former common parent transferred its assets (and any liabilities assumed or to which the assets are subject) acquired in the group structure change to the subsidiary in a transaction to which section 351 applies;

(2) The former common parent and the subsidiary were members of the same consolidated group (see § 1.1502-80(e) for the non-application of section 357(c) to the transfer); and

(3) The asset basis taken into account is each asset's basis immediately after the group structure change (including any income or gain recognized in the group structure change and reflected in the asset's basis).

(d) *Adjustments*—(1) *Consideration not provided by P*. A member's basis in the stock of the former common parent is adjusted to reflect the fair market value of any consideration not provided by the member. For example, if S acquires T's assets in a group structure change to which section 368(a)(2)(D) applies, and S provides an appreciated asset (including stock of P) as partial consideration in the transaction, P's basis in S's stock is reduced by the fair market value of the asset.

(2) *Allocable share*—(i) *Asset acquisitions*. If a corporation receives less than all of the former common parent's assets and liabilities in the group structure change, the former common parent's net asset basis taken into account under paragraph (b)(1) of this section is adjusted accordingly.

(ii) *Stock acquisitions*. If a corporation owns less than all of the former common parent's stock immediately after a group structure change described in paragraph (b)(2) of this section, the percentage of the former common parent's net asset basis taken into account equals the percentage (by fair market value) of the former common parent's stock owned immediately after the group structure change.

(3) *Multiple classes of stock*. If a corporation has more than one class of stock outstanding immediately after the group structure change, the basis determined under this section is allocated among the classes in proportion to the fair market value of each class. See section 358(b).

(4) *Higher tier members*. To the extent that the former common parent is owned by members other than the new common parent, the basis of all subsidiaries owning, directly or indirectly, in whole or in part, an interest in the former common parent's assets or liabilities is adjusted consistent with the principles of this section. The adjustments are applied in the order of the tiers, from the lowest to the highest.

(e) *Predecessors and successors*. For purposes of this section, any reference to a corporation includes a reference to a successor or predecessor as the context may require. See § 1.1502-32(f) for definitions of predecessor and successor.

(f) *Examples*. For purposes of the examples in this section, unless otherwise stated, all corporations have only one class of stock outstanding, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this section are illustrated by the following examples.

Example 1. Triangular merger. (a) P is the common parent of one group and T is the common parent of another group. T has assets with an aggregate basis of \$60 and fair market value of \$100, and T has no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P forms S and T merges into S with the T shareholders receiving P stock in exchange for their T stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply. The transaction is also a reverse

acquisition under § 1.1502-75(d)(3). Thus, the acquisition is a group structure change under § 1.1502-33(f), and P's earnings and profits are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent.

(b) Under paragraph (b)(1) of this section, P's basis in S's stock is adjusted to reflect P's allocable share of T's net asset basis. Under paragraph (c) of this section, T's net asset basis is \$60, the basis T would have in the stock of a subsidiary under section 358 if T had transferred all of its assets and liabilities to the subsidiary in a transaction to which section 351 applies. Thus, P is treated as having a \$60 basis in S's stock. See also § 1.358-6.

(c) The facts are the same as in paragraph (a) of this *Example 1*, except that T has two assets, an operating asset with an \$80 basis and \$90 fair market value, and stock of a subsidiary with a \$20 excess loss account and \$10 fair market value. Under paragraph (c) of this section, T's net asset basis is \$60. See sections 351 and 358, and § 1.1502-19. Consequently, P has a \$60 basis in S's stock. S has an \$80 basis in the asset and \$20 excess loss account in the stock of the subsidiary.

(d) The facts are the same as in paragraph (a) of this *Example 1*, except that P forms S with a \$100 contribution on January 1 of Year 1, and, pursuant to a plan during Year 6, S purchases \$100 of P stock and T merges into S with the T shareholders receiving P stock in exchange for their T stock. Under paragraph (b)(1) of this section, P's \$100 basis in S's stock is increased by \$60 to reflect T's net asset basis. However, under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$100 (the fair market value of the P stock) because the P stock purchased by S and used in the transaction is consideration not provided by P.

Example 2. Stock acquisition. (a) P is the common parent of one group and T is the common parent of another group. T has assets with an aggregate basis of \$60 and fair market value of \$100, and T has no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P forms S and S acquires all of T's stock in exchange for P stock. The exchange is a transaction to which section 368(a)(1)(B) applies. The transaction is also a reverse acquisition under § 1.1502-75(d)(3). Thus, the acquisition is a group structure change under § 1.1502-33(f), and the earnings and profits of P and S are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent.

(b) Under paragraph (d)(4) of this section, although S is not the new common parent of the T group, adjustments must be made to S's basis in T's stock consistent with the principles of this section. Although S's basis in T's stock would ordinarily be determined under section 362 by reference to the basis of T's shareholders in T's stock immediately before the group structure change, under the principles of paragraph (b)(2) of this section, S's basis in T's stock is determined by reference to T's net asset basis. Thus, S's basis in T's stock is \$60.

(c) Under paragraph (d)(4) of this section, P's basis in S's stock is adjusted to \$60 consistent with the adjustment to S's basis in T's stock.

(d) The facts are the same as in paragraph (a) of this *Example 2*, except that S has owned 10 percent of T's stock for several years and, pursuant to the plan, S acquires the remaining 90 percent of T's stock in exchange for P stock. The results are the same as in paragraphs (b) and (c) of this *Example 2*, because S's basis in the initial 10 percent of T's stock is adjusted under this section.

(e) The facts are the same as in paragraph (a) of this *Example 2*, except that P owns only 90 percent of S's stock. S's basis in T's stock is the same as in paragraph (b) of this *Example 2*. Under paragraphs (d)(2) and (d)(4) of this section, P's basis in its S stock is adjusted to \$54 (90 percent of S's \$60 adjustment).

Example 3. Taxable stock acquisition. (a) P is the common parent of one group and T is the common parent of another group. T has assets with an aggregate basis of \$60 and fair market value of \$100, and T has no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P acquires all of T's stock in exchange for 8 shares of P's stock and \$20 in a transaction that is a group structure change under § 1.1502-33(f). Because of the use of cash, however, P's acquisition of T's stock is not a transaction to which section 368(a)(1)(B) applies.

(b) Under paragraph (b)(2) of this section, P's basis in T's stock is adjusted to reflect T's net asset basis. Thus, Although P's basis in T's stock would ordinarily be a cost basis of \$100, P's basis in T's stock under this section is \$60.

(g) **Effective date—(1) General rule.** This section applies with respect to group structure changes occurring on or after [the date the final regulations are filed with the Federal Register].

(2) **Prior law.** For prior basis determinations, see § 1.1502-31 (as contained in the CFR edition revised as of April 1, 1992). For prior group structure changes, see § 1.1502-31T (as contained in the CFR edition revised as of April 1, 1992).

§ 1.1502-31T [Removed]

Par. 11. Section 1.1502-31T is removed.

Par. 12. Section 1.1502-32 is revised to read as follows:

§ 1.1502-32 Investment adjustments.

(a) **In general—(1) Purpose.** This section provides rules for adjusting the basis of the stock of a subsidiary (S) owned by another member (P) (and any excess loss account in S's stock under § 1.1502-19). The rules of this section reflect the treatment of P and S as a single entity by adjusting P's basis (or excess loss account) in S's stock to reflect amounts recognized by S and taken into account in determining consolidated taxable income, and amounts distributed by S. Thus, the adjustments prevent items recognized

by S from being recognized a second time on P's disposition of S's stock and cause P to recapture items recognized by S (e.g., excess loss accounts under § 1.1502-19). Adjustments are also made for tax-exempt income and noncapital, nondeductible expenses to prevent these items from resulting in income, gain, or loss from the sale of S's stock.

(2) **General principles.** The rules of this section and other applicable provisions of law must be applied in a manner that is consistent with and reasonably carries out the purposes of this section. For example, an adjustment must not have the effect of duplicating an item in S's stock basis. In the absence of specific guidance, adjustments must be made in a manner that reflects all of the facts and circumstances, the underlying economic arrangement, applicable federal tax accounting principles, and the purposes stated in paragraph (a)(1) of this section.

(3) **Application of other provisions of law.** The rules of this section are in addition to rules under other provisions of law that are not inconsistent with this section. For example, a capital contribution by P to S increases P's basis in S's stock. See § 1.1502-11(b) for limitations on the use of losses. See § 1.1502-19 for rules relating to excess loss accounts.

(b) **Stock basis adjustments—(1) Timing of adjustments.** Adjustments under this section are made as of the close of each consolidated return year, and as of any other time if a determination at that time is necessary to determine a tax liability of any person. For example, adjustments are made as of P's sale of S's stock, in order to measure P's income gain, or loss from the sale. A current adjustment may be necessary even if tax liability is not affected until a later time. Thus, if P sells only 50 percent of S's stock and is treated under § 1.1502-19(c)(1)(ii)(B) as disposing of the balance of S's stock, adjustments must be made for the retained stock as of the disposition (whether or not P has an excess loss account in that stock). Similarly, if S liquidates during a consolidated return year, adjustments must be made as of the liquidation (even if the liquidation is tax free under section 332) if P's adjustments tier up to a higher tier member. See paragraph (b)(4)(vi) of this section for rules applicable if P's interest in S's stock varies during the consolidated return year.

(2) **Application of adjustments—(i) Stock basis.** P's basis in S's stock is increased by positive adjustments and decreased by negative adjustments under paragraph (b)(3) of this section.

(ii) *Excess loss account.* If an adjustment under paragraph (b)(3) of this section is negative and exceeds P's basis in S's stock, the excess is referred to as P's excess loss account. Subsequent negative adjustments increase P's excess loss account. Subsequent positive adjustments first eliminate the excess loss account and any remaining amount increases P's basis in S's stock. See § 1.1502-19 for rules relating to excess loss accounts, including basis determinations and adjustment under other applicable rules of law that may result in an excess loss account.

(iii) *Allocation.* The basis adjustment under this paragraph (b)(2) must be allocated under paragraph (c) of this section among the shares of S's stock if, for example, P owns less than all of S's stock, S has more than one class of stock outstanding, or P has different bases (or excess loss accounts) in different blocks of S's stock.

(3) *Amount of adjustment.* The adjustment, made as of the time of the adjustment, is the net amount (treating income and gain items as increases and losses, deductions, expenses, and distributions as decreases) of S's—

- (i) Taxable income or tax loss;
- (ii) Tax-exempt income;
- (iii) Noncapital, nondeductible expenses; and
- (iv) Distributions with respect to S's stock.

(4) *Operating rules.* For purposes of determining P's adjustments under paragraph (b)(3) of this section for S's stock—

(i) *Taxable income and tax loss.* S's taxable income is consolidated taxable income determined by taking into account only S's items of income, gain, deduction, and loss, and S's deductions and losses are taken into account whether or not they are absorbed by S. If S's deductions and losses exceed its gross income, the excess is referred to as S's tax loss. For this purpose—

(A) To the extent that S's tax loss is absorbed in the year it arises (by a member other than S) or is carried forward and absorbed in a subsequent year (by any member, including S), the loss is treated as a tax loss under paragraph (b)(3)(i) of this section in the year in which it is absorbed;

(B) To the extent that S's tax loss is carried back to a prior year (whether consolidated or separate) and absorbed (by any member, including S), the loss is treated as tax loss under paragraph (b)(3)(i) of this section in the year in which it arises and not in the year in which it is absorbed; and

(C) Any gross-up for taxes paid is not taken into account. A gross-up is an

amount of taxes paid by another taxpayer that S is treated as having paid (e.g., income included under section 78 or the portion of an undistributed capital gain dividend that is treated as tax deemed to have been paid by a shareholder under section 852(b)(3)(D)(ii)).

(ii) *Tax-exempt income.*—(A) *In general.* S's tax-exempt income is income that is recognized by S but is permanently excluded from (i.e., never taken into account in determining) S's gross income under applicable law. For example, interest excluded from gross income under section 103 is tax-exempt income, and income realized but not recognized under section 1031 is not.

(B) *Equivalent deductions.* To the extent that an item of S's income is permanently offset by a deduction or other item that does not represent a recovery of basis (whether through a deduction, loss, cost, expense, or otherwise) or an expenditure of money, the item of income is treated as tax-exempt income and is taken into account under paragraph (b)(4)(ii)(A) of this section. In addition, the item of income and the offsetting item are taken into account under paragraph (b)(4)(i) of this section. For example, if S receives a \$100 dividend with respect to which a \$70 dividend-received deduction is allowed under section 243, \$70 of the dividend is treated as tax-exempt income (assuming that no corresponding stock basis reduction is required under section 1059 or otherwise). Accordingly, P's basis in S's stock increases by \$100 because the \$100 dividend and \$70 deduction are taken into account under paragraph (b)(4)(i) of this section (resulting in a \$30 increase), and \$70 of the dividend is also taken into account under paragraph (b)(4)(ii)(A) of this section. Similarly, income from mineral properties is treated as tax-exempt income to the extent it is offset by deductions for depletion in excess of the basis of the property.

(C) *Discharge of indebtedness income.* Discharge of S's indebtedness that is excluded from gross income under section 108(a) is treated as tax-exempt income to the extent the discharged amount is applied to reduce tax attributes under sections 108(b) and 1017 and the attribute reduction is taken into account under paragraph (b)(4)(iii) of this section. Discharge of S's indebtedness that is excluded from gross income but is not applied to reduce tax attributes is not treated as tax-exempt income.

(D) *Basis shifts.* An increase in the basis of S's assets (or its equivalent, such as an increase in a loss carryover or a decrease in an excess loss account

in stock owned by S) is treated as tax-exempt income to the extent that the increase—

(1) Is not otherwise taken into account in determining stock basis;

(2) Is determined directly by reference to a noncapital, nondeductible expense that is taken into account under paragraph (b)(4)(iii) of this section (or incurred by the common parent); and

(3) Has the effect (viewing the group in the aggregate, and netting the increase and the noncapital, nondeductible expense) or causing the expense to be deferred rather than permanently disallowed. For example, a basis increase under section 50(c)(2) is treated as tax-exempt income to the extent the preceding basis reduction under section 50(c)(1) is reflected in the basis of a member's stock. See also section 167(e).

(iii) *Noncapital, nondeductible expenses.*—(A) *In general.* Noncapital, nondeductible expenses of S are deductions or losses that are recognized by S (whether through a cost, expense, expenditure of money, or otherwise) but are permanently disallowed (i.e., never taken into account) under applicable law in determining S's taxable income or loss. For example, federal taxes described in section 275 are noncapital, nondeductible expenses. On the other hand, if S sells and repurchases a security subject to section 1091, the disallowed loss is not a noncapital, nondeductible expense because the corresponding basis adjustment prevents the disallowance from being permanent.

(B) *Nondeductible basis recovery.* A decrease in the basis of S's assets (or its equivalent, such as a decrease in a loss carryover, a denial of basis for taxable income, or an increase in an excess loss account in stock owned by S) may be treated as noncapital, nondeductible expense to the extent that the decrease is not otherwise taken into account in determining stock basis and is permanently disallowed in determining S's taxable income or tax loss. Whether a decrease is so treated is determined by taking into account both the purposes for requiring the decrease and the purposes of this section. For example, S has a noncapital, nondeductible expense if the basis of its assets is decreased under section 50(c)(1), 108(b), or 167(e), or under § 1.1502-20(b), S's losses are reattributed under § 1.1502-20(g), or S's losses are realized but not recognized under section 311(a), because these provisions are intended to permanently eliminate S's recovery of the basis. In contrast, a decrease generally is not a noncapital, nondeductible expense if it

results because S's basis in assets received in a liquidation to which section 332 applies is less than S's basis in the stock cancelled, or S distributes the stock of a subsidiary in a distribution to which section 355 applies.

(iv) *Distributions.* Distributions taken into account under paragraph (b)(3)(iv) of this section are distributions with respect to S's stock to which section 301 applies. A distribution is taken into account under paragraph (b)(3)(iv) of this section when the shareholder becomes entitled to the distribution (generally on the record date). For example, if P becomes entitled to the distribution before it is made, S is treated as distributing the amount to P at the time P becomes entitled to the distribution. If it is later established, based on all of the facts and circumstances, that the distribution will not be made, the initial adjustment is reversed as of the date it was made.

(v) *Tiering up of adjustments.* The adjustments to S's stock under this section are taken into account in determining adjustments to higher tier stock. The adjustments are applied in the order of the tiers, from the lowest to the highest. For example, if P is a subsidiary whose stock is owned by another member, P's adjustment to S's stock is taken into account in determining the adjustments to stock of P owned by other members.

(vi) *Varying interests.* If P's interest in S's stock varies during the consolidated return year (i.e., P owns S's stock for less than an entire consolidated return year, or the percentage of S's stock owned by P varies during the year), the adjustments under this section are made by taking into account P's varying interests in S's stock. If § 1.1502-76(b) applies to S for the consolidated return year, P's varying interests under this paragraph (b)(4)(vi) are determined under that section. If § 1.1502-76(b) does not apply, P's varying interests are determined under the applicable principles of § 1.1502-76(b), but ratable allocation under the principles of § 1.1502-76(b)(2)(ii) may be used without filing an election under § 1.1502-76(b)(2)(ii)(D).

(vii) *Tax sharing agreements.* For purposes of this section, taxes are taken into account by applying the principles of section 1552 and the percentage method under § 1.1502-33(d)(2) (and by assuming a 100 percent allocation of any decreased tax liability). The treatment of amounts allocated under this paragraph (b)(4)(vii) is analogous to the treatment of allocations under § 1.1552-1(b)(2). For example, if one member owes a payment to a second member,

the first member is treated as indebted to the second member. If the indebtedness is not paid, the amount not paid generally is treated as a distribution, contribution, or both, depending on the relationship between the members.

5. *Examples.* For purposes of the examples in this section, unless otherwise stated, P owns all of S's stock for the entire year, S has only one class of stock outstanding, S owns no stock of lower tier members, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, preferred stock is described in section 1504(a)(4), all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this paragraph (b) are illustrated by the following examples.

Example 1. Taxable income. (a) During Year 1, the P group has \$100 of consolidated taxable income when determined by taking into account only S's items of income, gain, deduction, and loss. Under paragraph (b)(1) of this section, P must adjust its basis in S's stock as of the close of Year 1. Under paragraphs (b)(3) and (b)(4)(i) of this section, P has a \$100 positive adjustment with respect to S's stock for Year 1. Under paragraph (b)(2) of this section, this positive adjustment increases P's basis in S's stock by \$100 as of the close of Year 1.

(b) The facts are the same as in paragraph (a) of this *Example 1*, except that, during Year 1, S sells property to P and recognizes a \$25 gain, which is deferred under § 1.1502-13 and taken into account in Year 3 when P resells the property. Under paragraph (b)(4)(i) of this section, the deferred gain is not additional taxable income for Year 1 because it is not taken into account in determining the P group's consolidated taxable income for that year. Moreover, it is not tax-exempt income under paragraph (b)(4)(ii) of this section because it is not permanently excluded from S's gross income. Thus, the deferred gain does not result in a basis adjustment until Year 3, when it is taken into account in determining the P group's consolidated taxable income.

(c) The facts are the same as in paragraph (b) of this *Example 1*, except that P sells S's stock on December 31 of Year 2. Under § 1.1502-13, S takes the \$25 deferred gain into account immediately before the sale. Thus, P increases its basis in S's stock by the \$25 immediately before the stock sale.

Example 2. Tax loss. (a) During Year 2, the P group has a \$50 consolidated net operating loss when determined by taking into account only S's items of income, gain, deduction, and loss. S's loss is absorbed by the P group in Year 2, offsetting P's income for that year. Under paragraphs (b)(3) and (b)(4)(i)(A) of this section, because S's loss is absorbed in the year it arises, the loss is treated as a \$50 tax loss for Year 2 and P has a \$50 negative adjustment with respect to S's stock. Under paragraph (b)(2) of this section, this negative adjustment decreases P's basis in S's stock

by \$50. Under paragraph (b)(2)(ii) of this section, if the decrease exceeds P's basis in S's stock, the excess is P's excess loss account in S's stock.

(b) The facts are the same as in paragraph (a) of this *Example 2*, except that P has no income or loss for Year 2, the \$50 consolidated net operating loss determined by taking into account only S's items is carried back and absorbed by the P group in Year 1 (offsetting the income of P or S), and the P group receives a \$17 tax refund that P pays to S. Under paragraph (b)(4)(i)(B) of this section, because the loss is carried back and absorbed in Year 1, the loss is treated as a \$50 tax loss for Year 2 (the year in which it arises). Under paragraph (b)(4)(ii) of this section, the refund is treated as tax-exempt income of S for Year 2 (when the loss is taken into account). Thus, under paragraph (b)(2) of this section, P decreases its basis in S's stock by \$33 as of the close of Year 2 (the \$50 tax loss, less the \$17 tax refund).

(c) The facts are the same as in paragraph (a) of this *Example 2*, except that P has no income or loss for Year 2, and S's tax loss is carried forward and absorbed by the P group in Year 3 (offsetting the income of P or S). Under paragraph (b)(4)(i)(A) of this section, the loss is not treated as a tax loss under paragraph (b)(3) of this section until Year 3.

Example 3. Tax-exempt income and noncapital, nondeductible expenses. (a) During Year 1, the P group has \$500 of consolidated taxable income. However, the P group has a \$100 consolidated net operating loss when determined by taking into account only S's items of income, gain, deduction, and loss. Also during Year 1, S has \$80 of interest income that is permanently excluded from gross income under section 103 and incurs a related \$60 of expense for which a deduction is permanently disallowed under section 265.

(b) Under paragraph (b)(4)(ii)(A) of this section, S has \$80 of tax-exempt income for Year 1. Under paragraph (b)(4)(iii) of this section, S also has \$60 of noncapital, nondeductible expenses. Thus, under paragraph (b)(2) of this section, P decreases its basis in S's stock as of the close of Year 1 by \$80 (the \$100 tax loss, less \$80 of tax-exempt income, plus \$60 of noncapital, nondeductible expenses).

Example 4. Discharge of indebtedness. (a) P forms S on January 1 of Year 1 with a nominal capital contribution and S borrows \$200. During Year 1, S's assets decline in value and the P group has a \$100 consolidated net operating loss when determined by taking into account only S's items of income, gain, deduction, and loss. None of the loss is absorbed in Year 1, and, at the close of Year 1, S is discharged from \$100 of indebtedness. Under section 108(a), S's \$100 of discharge of indebtedness is excluded from the P group's gross income because of insolvency. Under section 108(b), however, S's \$100 net operating loss is reduced to zero.

(b) Under paragraph (b)(4)(ii)(C) of this section, all \$100 of the discharge is treated as tax-exempt income because the discharge results in a \$100 reduction to S's net operating loss. Under paragraph (b)(4)(iii) of this section, the reduction of the net operating

loss is treated as a noncapital, nondeductible expense because the net operating loss is permanently disallowed by section 108(b). Consequently, the loss of the borrowed funds and the cancellation of the indebtedness result, in the aggregate, in no positive or negative adjustment to P's basis in S's stock under paragraph (b)(2) of this section for Year 1.

(c) The facts are the same as in paragraph (a) of this *Example 4*, except that \$70 of S's net operating loss is absorbed in Year 1, offsetting P's income for that year, and the indebtedness is discharged at the beginning of Year 2. Under paragraph (b) of this section, the \$70 of S's loss absorbed in Year 1 reduces P's basis in S's stock by \$70 as of the close of Year 1. Under section 108(a), S's discharge of indebtedness in Year 2 is excluded from the P group's gross income because of insolvency. Under section 108(b), the remaining \$30 of S's net operating loss carryover from Year 1 is reduced to zero. No other attributes are reduced. Under paragraph (b)(4)(ii)(C) of this section, only \$30 of the discharge is treated as tax-exempt income because only that amount is applied to reduce attributes. Under paragraph (b)(4)(iii) of this section, the \$30 net operating loss permanently disallowed by section 108(b) is treated as a noncapital, nondeductible expense. See also § 1.1502-19(c)(1)(iii).

Example 5. Distributions. (a) During Year 1, the P group has \$120 of consolidated taxable income when determined by taking into account only S's items of income, gain, deduction, and loss. On December 31 of Year 1, S declares and makes a \$10 dividend distribution to P. Thus, under paragraph (b)(2) of this section, P increases its basis in S's stock as of the close of Year 1 by \$110 (\$120 of taxable income, less a \$10 distribution).

(b) The facts are the same as in paragraph (a) of this *Example 5*, except that, in December of Year 1, S declares (and P becomes entitled to) another \$70 dividend distribution with respect to its stock, but P does not receive the distribution until after it sells all of S's stock on December 31 of Year 1. S is treated as making a \$70 distribution to P at the time P becomes entitled to the distribution. Consequently, under paragraph (b)(2) of this section, P increases its basis in S's stock as of the close of Year 1 by only \$40 (\$120 of taxable income, less two distributions totalling \$80). Any further adjustments after S ceases to be a member and the \$70 distribution is made would be duplicative, because the stock basis has already been adjusted for the distribution. Accordingly, the distribution will not result in further adjustments, even if the distribution is a payment to which section 301(c)(2) or (3) applies. (If S never pays the \$70, P's positive adjustment with respect to S's stock for Year 1 is increased from \$40 to \$110).

Example 6. Tiering up of basis adjustments. P owns all of S's stock, and S owns all of T's stock. During Year 1, the P group has \$100 of consolidated taxable income when determined by taking into account only T's items of income, gain, deduction, and loss, and \$50 of consolidated taxable income when determined by taking into account only S's items. S increases its basis in T's stock by \$100. Under paragraph (b)(4)(v) of this

section, this \$100 basis adjustment is taken into account in determining P's basis in S's stock. Thus, under paragraph (b)(2) of this section, P increases its basis in S's stock by \$150.

Example 7. Allocation of items. (a) On January 1 of Year 1, P is the common parent of a consolidated group, and S is an unaffiliated corporation filing separate returns on a calendar-year basis. On June 30 of Year 1, P acquires all of S's stock. During Year 1, S has \$100 of ordinary income, of which § 1.1502-76(b) allocated \$60 to the period from January 1 to June 30 and \$40 to the period from July 1 to December 31. Consequently, under paragraph (b)(2) of this section, P increases its basis in S's stock by \$40.

(b) The facts are the same as in paragraph (a) of this *Example 7*, except that P owns all of S's stock on January 1 of Year 1, and P sells all of S's stock on June 30. Under paragraph (b)(2) of this section, P increases its basis in S's stock by \$60 immediately before the stock sale. The results would be the same if, on June 30, P retained its S stock but S became a nonmember because S issued additional shares to nonmembers.

(c) Assume, instead, that P owns all of S's stock on January 1 of Year 1 and P sells the stock on June 30, a \$100 consolidated net operating loss attributable to S is carried by the P group to Year 1 under the principles of §§ 1.1502-21 and 1.1502-79. Under § 1.1502-79(a)(1)(ii), the consolidated net operating loss may be apportioned to S only to the extent not absorbed by the P group during the consolidated return year. Under paragraph (b)(4)(i) of this section, if the income of the P group for Year 1 (whether it arises before or after P's sale of S's stock) is offset by the loss, the absorption is reflected under paragraph (b)(3)(i) of this section. Thus, under paragraph (b)(2) of this section, P's basis in S's stock is reduced immediately before the sale of S's stock to the extent that the loss is absorbed and not carried by S to its first separate return year.

Example 8. Gross-ups. (a) On January 1 of Year 1, P owns all of S's stock and S owns all of the stock of T, a newly formed controlled foreign corporation that is not a passive foreign investment company. In Year 1, T has \$100 of subpart F income and pays \$34 of foreign income tax, leaving T with \$66 of earnings and profits. The P group has \$100 of consolidated taxable income when determined by taking into account only S's items (the inclusion under section 951(a), including the section 78 gross-up). As a result of the section 951(a) inclusion, S increases its basis in T's stock by \$66 under section 961(a).

(b) Although S's taxable income for purposes of paragraph (b)(3) of this section would generally be \$100, paragraph (b)(4)(i)(C) of this section provides that any gross-up for taxes paid is not taken into account. Thus, S's taxable income is only \$66 for purposes of paragraph (b) of this section. Because the P group is allowed a \$34 credit, S's after-tax income resulting from the inclusion under section 951(a) is \$66, and P increases its basis in S's stock by \$66 under paragraph (b)(2) of this section.

(c) The facts are the same as in paragraph (a) of this *Example 8*, except that T

distributes its \$66 of earnings and profits in Year 2. The \$66 distribution received by S is excludable from S's income under section 959(a) because the distribution represents earnings and profits attributable to amounts that were included in S's income under section 951(a) for Year 1. In addition, S's basis in T's stock is decreased by \$66 under section 961(b). The excluded distribution is not tax-exempt income under paragraph (b)(4)(ii) of this section because of the corresponding reduction to S's basis in T's stock. Consequently, P's basis in S's stock is not adjusted under paragraph (b)(2) of this section for Year 2.

Example 9. Recapture. (a) S is a life insurance company. During Year 1, the P group has \$200 of consolidated taxable income, determined by taking into account only S's items of income, gain, deduction, and loss (including a \$300 small company deduction under section 806). In addition, S has \$100 of tax-exempt interest income, \$60 of which is S's "company share." The remaining \$40 of tax-exempt income is the "policyholders' share" that reduces S's deduction for increase in reserves.

(b) Under paragraph (b)(4)(i) of this section, S has \$200 of taxable income for Year 1. Also for Year 1, S has \$100 of tax-exempt income under paragraph (b)(4)(ii)(A) of this section, and another \$300 is treated as tax-exempt income under paragraph (b)(4)(ii)(B) of this section because of the deduction under section 806. Under paragraph (b)(4)(iii) of this section, S has \$40 of noncapital, nondeductible expenses for Year 1 because S's deduction under section 807 for its increase in reserves has been permanently reduced by the \$40 policyholders' share of the tax-exempt interest income. Thus, under paragraph (b)(2) of this section, P increases its basis in S's stock by \$560.

(c) Assume, instead, that S is a property and casualty company and, during Year 1, S accrues \$100 of estimated salvage recoverable under section 832. Of this amount, \$87 (87 percent of \$100) is excluded from gross income because of the "fresh start" provisions of section 11305(c) of Public Law 101-508 (the Omnibus Budget Reconciliation Act of 1990). Thus, S has \$87 of tax-exempt income under paragraph (b)(4)(ii)(A) of this section that increases P's basis in S's stock for Year 1. (S also has \$13 of taxable income over the period of inclusion under section 481.) In Year 5, S determines that the \$100 salvage recoverable was overestimated by \$30 and deducts the \$30 for the reduction of the salvage recoverable. However, S has \$26.1 (87 percent of \$30) of taxable income in Year 5 due to the partial recapture of its fresh start. Because S has no basis corresponding to this income, S is treated under paragraph (b)(4)(iii)(B) of this section as having a \$26.1 noncapital, nondeductible expense in Year 5. This treatment is necessary to reflect the elimination of the erroneous fresh start in S's stock basis and causes a decrease in P's basis in S's stock by \$30 for Year 5 (a \$3.9 taxable loss and a \$26.1 special adjustment).

(c) *Allocation of adjustments among shares of stock—(1) In general.* The portion of the adjustment described in

paragraph (b)(3) of this section that is attributable to a distribution is allocated to the shares of S's stock entitled to the distribution. The remainder of the adjustment (i.e., the portion described in paragraphs (b)(3)(i) through (iii) of this section) is allocated among the shares of S's stock, including shares owned by nonmembers, as provided in paragraphs (c)(2) through (4) of this section (although the allocation to stock owned by nonmembers has no effect on its basis). If the adjustment is positive, it is allocated first to any preferred stock to the extent provided in paragraph (c)(3) of this section, and then to the common stock. If the adjustment is negative, it is allocated only to common stock. See paragraph (c)(4) for the reallocation of adjustments, and paragraph (d) of this section for definitions. See § 1.1502-19(d) for special allocations of basis determined or adjusted under the Internal Revenue Code with respect to excess loss accounts. See § 1.1502-31 for additional rules applicable to adjustments or determinations.

(2) *Common stock*—(i) *Allocation within a class*. The portion of the adjustment described in paragraph (b)(3) of this section (determined without taking distributions into account) that is allocable to a class of common stock is generally allocated equally to each share within the class. However, if P has an excess loss account in shares of a class of common stock, the portion of any positive adjustment allocable to P with respect to the class is allocated first to eliminate the excess loss account. Similarly, any negative adjustment is allocated first to reduce P's basis in shares of the class before creating or increasing P's excess loss account. Distributions and any adjustments or determinations under the Internal Revenue Code (e.g., basis increases resulting from capital contributions) are taken into account before the allocation is made under this paragraph (c)(2)(i).

(ii) *Allocation among classes*. If S has more than one class of common stock, the extent to which the adjustment described in paragraph (b)(3) of this section (determined without taking distributions into account) is allocated to each class is determined by taking into account the terms of each class and all other facts and circumstances relating to the overall economic arrangement. The allocation generally must reflect the manner in which the classes participate in the economic benefit or burden (if any) corresponding to the items of income, gain, deduction, or loss allocated. In determining the

participation, the following factors are among those to be considered—

(A) The interest of each share in economic profits and losses (if different than the interest in taxable income);

(B) The interest of each share in cash flow and other non-liquidating distributions; and

(C) The interest of each share in distributions in liquidation. Distributions and any adjustments or determinations that are made under the Internal Revenue Code are taken into account before the allocation is made under this paragraph (c)(2)(ii).

(3) *Preferred stock*. If the adjustment under paragraph (b)(3) of this section (determined without taking distributions into account) is positive, it is allocated to preferred stock to the extent required (when aggregated with prior allocations to the preferred stock during the period that S is a member of the consolidated group) to reflect distributions described in section 301 to which the preferred stock becomes entitled, and arrearages arising, during the period that S is a member of the consolidated group. If the amount of distributions and arrearages exceeds the positive amount (when aggregated with prior allocations), the positive amount is first allocated among classes of preferred stock to reflect their relative priorities, and the amount allocated to each class is then allocated pro rata within the class. A positive amount that is allocated to a share with respect to a period when the share is owned by a nonmember is not reflected in the basis of the share under paragraph (b)(2) of this section. For this purpose, if P and S cease to be members of one consolidated group and become members of another consolidated group, the determination under this paragraph (c)(3) is made by taking into account the consolidated return years of the prior group.

(4) *Cumulative redetermination*. P's basis (or excess loss account) in each share of S's common and preferred stock must be redetermined whenever necessary to determine the tax liability of any person. See paragraph (b)(1) of this section. The redetermination is made by reallocating the net adjustment described in paragraph (b)(3) of this section (determined without taking distributions into account) for each consolidated return year (or other applicable period) of the group by taking into account all of the facts and circumstances affecting allocations under this paragraph (c) as of the redetermination date. The reallocation is treated for all purposes (including subsequent redeterminations) as the original allocation of an amount under

this paragraph (c). An amount may not be reallocated, however, to the extent that the amount has been used. An amount has been used to the extent the reallocation would affect the amount taken into account, directly or indirectly, by any member in determining income, gain, or loss from the disposition of stock of a member, in determining the basis of any property other than stock of a member, or in determining the basis of stock of a member following a deconsolidation.

(5) *Examples*. The principles of this paragraph (c) are illustrated by the following examples.

Example 1. Ownership of less than all the stock. (a) On January 1 of Year 1, P owns 80 percent of S's only class of stock with an \$800 basis. During Year 1, S has \$100 of taxable income.

(b) Under paragraph (c)(1) of this section, the \$100 positive adjustment under paragraph (b)(3) of this section for S's taxable income is allocated among the shares of S's stock, including shares owned by nonmembers. Under paragraph (c)(2)(i) of this section, the adjustment is allocated equally to each share of S's stock. Thus, P increases its basis in S's stock as of the close of Year 1 by \$80. (The basis of the 20 percent of S's stock owned by nonmembers is not adjusted under this section).

(c) The facts are the same as in paragraph (a) of this *Example 1*, except that P buys the remaining 20 percent of S's stock on June 30 of Year 1 for \$208. Under the applicable principles of § 1.1502-76(b)(2)(i), S's \$100 of taxable income is allocable \$40 to the period from January 1 to June 30 and \$60 to the period from July 1 to December 31. Under paragraph (b)(2) of this section, to determine the adjustment to P's basis in S's stock, P's varying interest in S during Year 1 must be taken into account. Under paragraph (b)(4)(iv) of this section, the adjustment is determined in accordance with the applicable principles of § 1.1502-76(b). Thus, for the period ending June 30, P is treated as having a \$32 adjustment with respect to the S stock that P owns on that date (80 percent of \$40) and, under paragraph (b)(2)(i) of this section, the adjustment is allocated equally among P's shares of S's stock owned at that time. For the period ending December 31, P is treated as having a \$60 adjustment (100 percent of \$60) that is also allocated equally among P's shares of S's stock owned at that time. P's basis in the shares owned as of the beginning of the year therefore increases by \$80, from \$800 to \$880, and P's basis in the shares purchased on June 30 increases by \$12 from \$208 to \$220.

(d) The facts are the same as in paragraph (a) of this *Example 1*, except that S does not make any payment in recognition of the group's additional \$34 of consolidated tax liability resulting from S's taxable income. S's taxable income results in a positive adjustment, and under paragraph (b)(4)(vii) of this section, an additional \$34 of tax liability is taken into account under the principles of section 1552. Because S does not make any

payment in recognition of the additional tax liability, by analogy to the treatment under § 1.1552-1 (b)(2), S is treated as having made a \$34 payment that is described in paragraph (b)(4)(iii) of this section (noncapital, nondeductible expenses) and as having received an equal amount from P as a capital contribution. Thus, P increases its basis in S's stock by \$52.80 (80 percent of the \$100 of taxable income, less 80 percent of the \$34 tax payment). In addition, P increases its basis in S's stock by \$34 under the Code and paragraph (a)(3) of this section to reflect the capital contribution. In the aggregate, P increases its basis in S's stock by \$86.80.

Example 2. Preferred stock. (a) On January 1 of Year 1, P owns all of S's common stock with an \$800 basis, and nonmembers own all of S's preferred stock, which was issued for \$200. The preferred stock has a \$20 annual, cumulative preference as to dividends and has an initial liquidation preference of \$200. During Year 1, S has \$50 of taxable income and no distributions are declared or made.

(b) Under paragraphs (c) (1) and (3) of this section \$20 of the \$50 positive adjustment under paragraph (b)(3) of this section is allocated first to the preferred stock to reflect the dividend arrearage arising in Year 1. The remaining \$30 of the positive adjustment is allocated to the common stock, and P increases its basis in S's common stock from \$800 to \$830 as of the close of Year 1. (The basis of the preferred stock owned by nonmembers is not adjusted under this section.)

(c) The facts are the same as in paragraph (a) of this *Example 2*, except that S declares and makes a \$20 distribution with respect to the preferred stock during Year 1 in satisfaction of its preference. The results are the same as in paragraph (b) of this *Example 2*.

(d) The facts are the same as in paragraph (a) of this *Example 2*, except that S has no income or loss during Years 1 and 2, P purchases all of S's preferred stock on December 31 of Year 2 for \$240, and S has \$70 of taxable income during Year 3. Under paragraph (c)(3) of this section, \$60 of the \$70 positive adjustment under paragraph (b)(3) of this section is allocated to the preferred stock to reflect the dividends arrearages arising in Years 1 through 3, but only the \$20 that arises in Year 3 is reflected in the basis of the preferred stock under paragraph (b)(2) of this section (the remaining \$40 relates to periods when the preferred stock was owned by nonmembers). Thus, P increases its basis in S's preferred stock from \$240 to \$260, and P increases its basis in S's common stock from \$800 to \$810. If P had acquired all of S's preferred stock on December 31 of Year 2 in a transaction to which section 351 applies and, under section 362, P's initial basis in S's stock was \$200 (determined by reference to the transferor's basis), P's basis in S's preferred stock would increase from \$200 to \$220.

(e) The facts are the same as in paragraph (d) of this *Example 2*, except that S declares and makes a \$20 distribution with respect to the preferred stock in each of Years 1 and 2 in satisfaction of its preference, and P purchases all of S's preferred stock on December 31 of Year 2 for \$200. Under paragraph (c)(3) of this section, \$40 of the \$70

positive adjustment under paragraph (b)(3) of this section is allocated to the preferred stock to reflect the distributions in Years 1 and 2, and \$20 of the \$70 is allocated to the preferred stock to reflect the arrearage arising in Year 3. However, as in paragraph (d) of this *Example 2*, only the \$20 attributable to Year 3 is reflected in the basis of the preferred stock under paragraph (b)(2) of this section. Thus, P increases its basis in S's preferred stock from \$200 to \$220, and P increases its basis in S's common stock from \$800 to \$810.

Example 3. Cumulative redetermination. (a) P owns all of S's common and preferred stock. The preferred stock has a \$100 annual, cumulative preference as to dividends. During Year 1, S has \$200 of taxable income, the first \$100 of which is allocated to the preferred stock and the remaining \$100 of which is allocated to the common stock. During Year 2, S has no adjustment under paragraph (b)(3) of this section, and P sells all of S's common stock on December 31 of Year 2.

(b) Under paragraph (c)(4) of this section, P's basis in S's common stock must be redetermined as of the sale of the stock. The redetermination is made by reallocating the \$200 positive adjustment under paragraph (b)(3) of this section for Year 1 by taking into account all of the facts and circumstances affecting allocations as of the sale. Thus, the \$200 positive adjustment for Year 1 reallocated entirely to the preferred stock to reflect the dividend arrearages arising in Years 1 and 2. The reallocation away from the common stock reflects the fact that, because of the additional amount arrearage in Year 2, the common stock is not entitled to any part of the \$200 of taxable income from Year 1. Thus, the common stock has no positive or negative adjustment, and the preferred stock has a \$200 positive adjustment. These reallocations are treated as the original allocations for Years 1 and 2. The results for the common stock would be the same if the preferred stock was owned by nonmembers.

(c) The facts are the same as in paragraph (a) of this *Example 3*, except that S does not issue its preferred stock until the close of Year 1, S has no further adjustment under paragraph (b)(3) of this section for Year 3, and P sells S's common stock on December 31 of Year 3. Under paragraphs (c) (1) and (2) of this section, the \$200 positive adjustment for Year 1 is initially allocated entirely to the common stock. Under paragraph (c)(4) of this section, the \$200 adjustment is reallocated to the preferred stock to reflect the arrearages arising in Years 2 and 3.

(d) The facts are the same as in paragraph (a) of this *Example 3*, except that, during Year 2, S has a \$200 loss which results in a negative adjustment to the common stock before any redetermination. For purposes of the basis redetermination under paragraph (c)(4) of this section, the Year 1 and 2 adjustments under paragraph (b)(3) of this section are not netted. Thus, as in paragraph (b) of this *Example 3*, the redetermination is made by reallocating the \$200 positive adjustment for year 1 entirely to the preferred stock as of the close of Year 2. In addition, the \$200 negative adjustment for Year 2 is

allocated entirely to the common stock. Consequently, the preferred stock has a \$200 positive cumulative adjustment, and the common stock has a \$200 negative cumulative adjustment. The results would be the same if there were no other adjustments described in paragraph (b) of this section. P sells S's stock on December 31 of Year 3 rather than Year 2, and an additional \$100 arrearage arises in Year 3; only adjustments under paragraph (b)(3) of this section may be reallocated, and there is no additional adjustment for Year 3.

(e) The facts are the same as in paragraph (a) of this *Example 3*, except that, during Year 1, S declares and makes a distribution to P of \$100 as a dividend on the preferred stock and of \$100 as a dividend on the common stock. The taxable income and distributions result in no Year 1 adjustment under paragraph (b)(3) of this section for either the common or preferred stock. However, as in paragraph (b) of this *Example 3*, the redetermination under paragraph (c)(4) of this section is made by reallocating a \$200 positive adjustment for Year 1 (the actual adjustment described in paragraph (b)(3) of this section, determined without taking distributions into account) to the preferred stock as of the close of Year 2. Consequently, the preferred stock has a \$100 positive cumulative adjustment (\$200 of taxable income, less a \$100 distribution with respect to the preferred stock) and the common stock has a \$100 negative cumulative adjustment (for the distribution).

(f) The facts are the same as in paragraph (a) of this *Example 3*, except that P sells 10 percent of S's common stock on December 31 of Year 1, and the remaining 90 percent on December 31 of Year 2. P's basis in the common stock sold in Year 1 reflects \$10 of the adjustment allocated to the common stock for Year 1. Under paragraph (c)(4) of this section, because \$10 of the Year 1 adjustment was used in determining P's gain or loss, only \$90 is reallocated to the preferred stock, and \$10 remains allocated to the common stock sold.

(g) If in paragraph (f) of this *Example 3*, P is a lower tier member in the group, and there is a redetermination by members owning P's stock, a redetermination with respect to S's stock must be made first, and the effect of that redetermination on P's adjustments is taken into account under paragraph (b)(4)(v) of this section (tiering up of adjustments). The redetermination with respect to P's stock is made after taking into account the redetermination with respect to S's stock. However, as in paragraph (f) of this *Example 3*, to the extent that any adjustments with respect to S's stock have already been tiered up and used by P's shareholder to determine gain or loss or the basis of property, the adjustments may not be reallocated.

Example 4. Lower tier members. (a) P owns all of S's stock, and S owns all of T's common and preferred stock. The preferred stock has a \$100 annual, cumulative preference as to dividends. During Year 1, S has no adjustment under paragraph (b) of this section, and T has \$200 of taxable income, the first \$100 of which is allocated to the preferred stock, and the remaining \$100 of which is allocated to the common stock. S

and T have no adjustments under paragraph (b) of this section for Years 2 and 3. X, the common parent of another consolidated group, purchases all of S's stock on December 31 of Year 3, and S and T become members of the X group. During Year 4, T has \$200 of taxable income, and the tier up of this amount under paragraph (b)(4)(v) of this section is S's only adjustment under paragraph (b) of this section.

(b) Under paragraph (c)(4) of this section, the allocation of S's adjustments under paragraph (b) (e) of this section (determined without taking distributions into account) must be redetermined as of the time X acquires S's stock. As a result of this redetermination, T's common stock has no positive or negative adjustment and the preferred stock has a \$200 positive adjustment. Under paragraph (c) (3) of this section, the allocation of T's \$200 positive adjustment for Year 4 is determined by taking into account dividend arrearages on T's preferred stock and T's adjustments under paragraph (b) (3) of this section during the period that S and T are members of the P group. Thus, the entire \$200 is allocated to the preferred stock. Moreover, because the consolidated return years during which S and T were members of the P group are taken into account, the allocation of the \$200 positive adjustment for Year 4 to T's preferred stock is not treated as an allocation for a period for which the preferred stock is owned by a nonmember. Thus, the \$200 adjustment is reflected in S's basis in T's preferred stock under paragraph (b)(2) of this section.

(b) *Definitions.* For purposes of this section—

(1) *Class.* The shares of a member having the same material terms (without taking into account voting rights) are treated as a single class of stock.

(2) *Preferred stock.* Preferred stock is stock that is limited and preferred as to dividends and has a liquidation preference. A class of stock that is not described in section 1504 (a) (4), however, is not treated as preferred stock for purposes of paragraph (c) of this section if members own less than 80 percent of each class of common stock (determined without taking this paragraph (d)(2) into account).

(3) *Common stock.* Common stock is stock that is not preferred stock.

(e) *Overriding adjustments—(1) General rule.* If any person acts with a principal purpose to avoid the effect of the rules of this section, or uses the rules of this section to avoid the effect of any other provision of the consolidated return regulations, adjustments must be made as necessary to carry out the purposes of this section.

(2) *Appreciated or depreciated property.* If there is a transfer or distribution to or from S with a principal purpose to distort the adjustments for any member's stock, the allocations under paragraph (c) of this section must take into account all differences

between the adjusted basis (or excess loss account) and fair market value of all of S's assets at the time of the transfer or distribution

(3) *Deconsolidations.* If a corporation ceases to be a member with a principal purpose to avoid negative adjustments under this section, and members continue to own stock of the corporation, directly or indirectly, the basis of that stock is adjusted (or income or gain is recognized) in accordance with the purposes of this section. For this purpose, a member is treated as owning stock indirectly if the member would be treated as owning the stock under section 318 (a) (2).

(4) *Examples.* The principles of this paragraph (e) are illustrated by the following examples.

Example 1. Preferred stock treated as common stock. (a) S has 100 shares of common stock and 100 shares of preferred stock described in section 1504 (a)(4). P owns 80 shares of S's common stock and all of S's preferred stock. P anticipates that S will have negative adjustments under paragraph (b)(3) of this section during Years 1 and 2, all of which will be allocable to S's common stock, and positive adjustments thereafter. When the preferred stock was issued, P intended to cause S to recapitalize the preferred stock into common stock at the end of Year 2 in a transaction to which section 368 (a) (1) (E) applies. P's temporary ownership of the preferred stock is with a principal purpose to limit P's basis reductions under paragraph (b) of this section to 80 percent of the anticipated negative adjustments. The recapitalization is intended to cause significantly more than 80 percent of the anticipated positive adjustments to increase P's basis in S's stock because of P's increased ownership of S's common stock immediately after the recapitalization.

(b) Under paragraph (e) (1) of this section, the preferred stock owned by P is treated as common stock in Years 1 and 2 for purposes of this section. The allocation is made under the principles of paragraph (c) (2) (ii) of this section and P decreases its basis in both the common and preferred stock accordingly.

(c) Assume, instead, that P owns all of S's common stock and all of S's convertible preferred stock and that the preferred stock is treated under general principles of federal tax law as common stock at its issuance. The results are the same as in paragraph (b) of this *Example 1*, because the preferred stock is treated as converted into common stock regardless of whether the prohibited purpose exists.

Example 2. Deferral of investment adjustments. (a) On January 1 of Year 1, P has a \$100 basis in S's stock. P intends to sell S's stock to the X group at the end of Year 1 for \$300. X is a customer of S, and, with a principal purpose to increase the basis of S's assets immediately before X buys S's stock, X makes a \$200 prepayment to S. Under paragraph (b) of this section, the prepayment results in a positive adjustment that increases P's basis in S's stock to \$300, and P

recognizes no gain or loss from the sale of S's stock.

(b) Under paragraph (e) (1) of this section, because X's prepayment was with a principal purpose to distort investment adjustments, the \$200 positive adjustment is not made with respect to S's stock until S becomes a member of the X group.

Example 3. Contribution of appreciated property. (a) P owns all of the stock and S and T, each with a \$200 value. P has a \$150 basis in S's stock and a \$200 basis in T's stock. S and T each own 50 percent of U's stock. To eliminate P's gain from an anticipated sale of S's stock, T contributes to U an asset with a \$100 value and \$0 basis, and S contributes \$100 cash. U sells T's asset and recognizes a \$100 gain that results in a \$100 positive adjustment under paragraph (b) of this section. Ordinarily, under paragraph (c) of this section, the adjustment would be allocated equally to each share of U's stock. If so allocated, P's basis in S's stock would increase from \$150 to \$200 and P would recognize no gain from the sale of S's stock for \$200.

(b) Under paragraph (e) (2) of this section, because T transferred an appreciated asset to U with a principal purpose to increase P's basis in S's stock, the allocation of the \$100 positive adjustment under paragraph (c) of this section must take into account the contribution. Consequently, all \$100 of the positive adjustment is allocated to the U stock owned by T, rather than \$50 to the U stock owned by S and \$50 to the U stock owned by T. P's basis in S's stock remains \$150, and its basis in T's stock increases to \$300. Thus, P recognizes a \$50 gain from its sale of S's stock for \$200.

Example 4. Reorganizations. (a) On January 1 of Year 1, P forms S with a capital contribution of \$800, \$200 of which is in exchange for S's preferred stock described in section 1504 (a) (4) and the balance of which is for S's common stock. During Years 1 through 3, S has \$160 of ordinary income, \$60 of which is distributed with respect to the preferred stock in satisfaction of its \$20 annual preference as to dividends. Under § 1.1502-32, P's basis in S's preferred stock is unchanged, and its basis in S's common stock is increased from \$600 to \$700. On December 31 of Year 3, to reduce its gain from the anticipated sale of S's preferred stock P forms T with a capital contribution of all of S's stock in exchange for corresponding common and preferred stock of T in a transaction to which section 351 applies. At the time of the contribution, the fair market value of the common stock is \$700 and the fair market value of the preferred stock is \$300. P subsequently sells T's preferred stock for \$300.

(b) Under section 358 (b), P has a \$630 basis in T's common stock (70 percent of the \$900 aggregate stock basis) and a \$270 basis in T's preferred stock (30 percent of the \$900 aggregate stock basis). However, under paragraph (e) (2) of this section, P transferred S's stock to T with a principal purpose to distort the allocation of basis adjustments under § 1.1502-32. Thus, to preserve the allocation of adjustments under § 1.1502-32, P has a \$700 basis in T's common stock and a

\$200 basis in T's preferred stock. Consequently, P recognizes a \$100 gain from the sale of T's preferred stock.

Example 5. Basis adjustments after deconsolidation. (a) During Year 1, the P group has \$40 of consolidated taxable income, all of which is attributable to S under the principles of § 1.1502-79, and, under paragraph (b) of this section, P increases its basis in S's stock by \$40. P anticipates that S will have a \$40 ordinary loss during Year 2 that will be carried back and offset S's income in Year 1 and, under paragraph (b) of this section, cause P to decrease its basis in S's stock by \$40 for Year 2. With a principal purpose to avoid the decrease, P causes S to issue voting preferred stock that results in S becoming a nonmember at the close of Year 1. As anticipated, S has a \$40 net operating loss during Year 2, which is carried back to Year 1 and offsets S's income from Year 1.

(b) Under paragraph (e) (3) of this section, because P caused S to cease to be a member with a principal purpose to avoid negative adjustments under this section, and P continues to own stocks of S, the basis of the retained S stock is decreased by \$40 for Year 2. If P has less than a \$40 basis in the retained S stock, P must recognize income for Year 2 to the extent of the excess.

(f) **Predecessors and successors.** For purposes of this section, any reference to a corporation or to a share includes a reference to a successor or predecessor as the context may require. A corporation is a successor if the basis of its assets (or an excess loss account) is determined, directly or indirectly, in whole or in part, by reference to the basis (or excess loss account) of another corporation (the predecessor). A share is a successor if its basis (or excess loss account) is determined, directly or indirectly, in whole or in part, by reference to the basis (or excess loss account) of another share (the predecessor).

(g) **Reporting requirements.** A separate statement entitled "STATEMENT OF ADJUSTMENTS UNDER § 1.1502-32(g)" must be filed with the group's return. This statement must contain—

(1) The name and employer identification number (E.I.N.) of each subsidiary with respect to which adjustments under this section may be made;

(2) The net amount of the adjustment with respect to the subsidiary's stock under paragraph (b)(3) of this section for the consolidated return year or other period;

(3) The allocation of the basis adjustment under paragraph (b)(2) of this section among the shares of the subsidiary's stock owned by members (the allocation might not be pro rata among the shares if, for example, the subsidiary has more than one class of stock outstanding); and

(4) A description of any reallocation of adjustments or redeterminations.

(h) **Effective date—(1) General rule.** This section applies with respect to determinations (e.g., for purposes of determining basis in connection with a sale of stock) on or after [the date the final regulations are filed with the Federal Register]. If this section applies, basis and excess loss accounts must be determined or redetermined as if this section were in effect for all consolidated return years of the group. For this purpose, if P and S cease to be members of one consolidated group and become members of another consolidated group, the consolidated return years of the prior group are also taken into account.

(2) **Dispositions of stock before effective date.** If P disposes of stock of S before [the date the final regulations are filed with the Federal Register], the amount of P's income, gain, or loss is not redetermined. In addition, to the extent that P's determinations or adjustments with respect to S's stock were taken into account by P as of the disposition, the determinations or adjustments are not redetermined. Nevertheless, S's determinations or adjustments with respect to the stock of a lower tier member are redetermined in accordance with paragraph (g)(1) of this section (even if they were previously taken into account by P and reflected in income, gain, or loss from the disposition of S's stock) if S disposes of the stock on or after [the date the final regulations are filed with the Federal Register].

Assume, for example, that P owns all of S's stock, S owns all of T's stock, and T owns all of U's stock. If S sells 80 percent of T's stock before [the date the final regulations are filed with the Federal Register] (the effective date), S's income, gain, or loss from the sale, and the stock basis adjustments taken into account by S in the sale, are not redetermined if P sells S's stock after the effective date. If S sells the remaining 20 percent of T's stock after the effective date, S's stock basis adjustments with respect to that T stock are also not redetermined. However, if T and U become members of another consolidated group and T sells U's stock after the effective date, T's stock basis adjustments with respect to U's stock are redetermined (even though some of those adjustments may have been taken into account by S in its prior sale of T's stock). See § 1.1502-19(c) for the definition of disposition.

(3) **Deferred amounts.** For purposes of this paragraph (h), a disposition to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies is

deemed to occur at the time the income, gain, or loss is taken into account.

(4) **Distributions—(i) Deemed dividend elections.** If there is a deemed distribution and retribution pursuant to § 1.1502-32(f)(2) (as contained in the CFR edition revised as of April 1, 1992) in a consolidated return year ending before [the date the final regulations are filed with the Federal Register], this section is applied as if the deemed distribution and retribution under the election were an actual distribution by S and retribution by P as provided under the election.

(ii) **Affiliated earnings and profits.** This section does not apply to reduce the basis (or increase the excess loss account) in S's stock as a result of a distribution of earnings and profits if the distribution is made before [the date the final regulations are filed with the Federal Register], and the distribution does not cause a negative adjustment under the investment adjustment rules in effect at the time of the distribution. See § 1.1502-32 (b)(2)(iii) and (c)(2) (as contained in the CFR edition revised as of April 1, 1992) or any prior corresponding provision in effect with respect to the distribution and retribution.

(5) **Reporting requirements.** The reporting requirements under paragraph (g) of this section apply with respect to adjustments and redeterminations for taxable years beginning after [the date the final regulations are filed with the Federal Register].

(6) **Prior law.** For prior determinations, see prior final and temporary regulations issued under section 1502 of the Internal Revenue Code as in effect with respect to the determination. For example, § 1.1502-32T(a) may apply with respect to deconsolidations (as described in § 1.1502-33(e)) occurring before [the date the final regulations are filed with the Federal Register]. Thus, if P has a basis reduction account under § 1.1502-32T with respect to S's stock before [the date the final regulations are filed with the Federal Register], the basis reduction account continues to apply under § 1.1502-32T on and after [the date the final regulations are filed with the Federal Register].

Par. 13. Section 1.1502-32T is amended by revising the section heading and by adding paragraph (a)(6)(iii) to read as follows:

§ 1.1502-32T Basis reduction accounts before [the date the final regulations are filed with the Federal Register] (temporary).

(a) * * *

(6) * * *

(iii) *Termination of application.*

Notwithstanding paragraphs (a)(6)(i) and (ii) of this section, paragraph (a) of this section does not apply to stock of a subsidiary that ceases to be a member on or after [the date the final regulations are filed with the Federal Register].

Par. 14. Section 1.1502-33 is revised to read as follows:

§ 1.1502-33 Earnings and profits.

(a) *In general*—(1) *Purpose.* This section provides rules for determining the earnings and profits of a subsidiary (S) and any member (P) owning S's stock. In general, earnings and profits of members are determined under applicable provisions of law, including section 312. This section modifies the general determination to reflect the treatment of P and S as a single entity by causing the earnings and profits of lower tier members to be reflected in the earnings and profits of higher tier members and consolidating the group's earnings and profits in the common parent. References in this section to earnings and profits include, as the context may require, deficits in earnings and profits.

(2) *General principles.* The rules of this section and other applicable provisions of law must be applied in a manner that is consistent with and reasonably carries out the purposes of this section. For example, an adjustment must not have the effect of duplicating an item in S's earnings and profits. If S has earnings and profits that are reflected in the earnings and profits of P under paragraph (b) of this section, and S then transfers its assets to P in a liquidation to which section 332 applies, S's earnings and profits that P succeeds to under section 381 must be adjusted to prevent duplication. In the absence of specific guidance, earnings and profits must be determined and adjusted in a manner that reflects all of the facts and circumstances, the underlying economic arrangement, the principles of § 1.312-6, and the purposes stated in paragraph (a)(1) of this section.

(3) *Application of other provisions of law.* The rules of this section are in addition to rules under other provisions of law that are not inconsistent with this section. For example, the allowance for depreciation is determined in accordance with section 312(k).

(b) *Tiering up earnings and profits*—

(1) *General rule.* P's earnings and profits are adjusted under this section to reflect S's earnings and profits in accordance with the applicable principles of § 1.1502-32(b). For example, the adjustments are determined as of the close of each consolidated return year,

and as of any other time if a determination at that time is necessary to determine the earnings and profits of any person, and they are applied in the order of the tiers, from the lowest to the highest. However, the deferral of a negative adjustment for unabsorbed losses under § 1.1502-32(b)(4)(i) does not apply, and the tax sharing rules under paragraph (d) of this section apply rather than the principles of § 1.1502-32(b)(4)(vii). The adjustment under this paragraph (b)(1) to P's earnings and profits is treated as earnings and profits of P for the taxable year in which the adjustment occurs.

(2) *Allocating earnings and profits among shares of stock.* An allocable part of S's earnings and profits is reflected in P's earnings and profits based on P's ownership of S's stock. P's allocable part of S's earnings and profits is determined under—

(i) The varying interests principles of § 1.1502-32 (b)(4)(vi); and

(ii) The allocation principles of § 1.1502-32(c).

(3) *Examples.* For purposes of the examples in this section, unless otherwise stated, P owns all of S's stock for the entire year, S has only one class of stock outstanding, S owns no stock of lower tier members, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, preferred stock is described in section 1504(a)(4), all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this paragraph (b) are illustrated by the following examples.

Example 1. Tiering up earnings and profits.

(a) P forms S on January 1 of Year 1 with a \$100 capital contribution. S has \$100 of earnings and profits during Year 1, and no earnings and profits during Year 2. During Year 2, S distributes a \$50 dividend to P.

(b) Under paragraph (b)(1) of this section and the applicable principles of § 1.1502-32(b), S's \$100 of earnings and profits for Year 1 also increase P's earnings and profits for Year 1. P has no additional earnings and profits for Year 2 as a result of the \$50 distribution in Year 2, because there is a \$50 increase in P's earnings and profits as a result of the receipt of the dividend and a corresponding \$50 decrease in S's earnings and profits under section 312(a) that is reflected in P's earnings and profits under paragraph (b)(1) of this section.

(c) The facts are the same as in paragraph (a) of this Example 1, except that S distributes the \$50 dividend on December 31 of Year 1 rather than during Year 2. Under paragraph (b)(1) of this section and the applicable principles of § 1.1502-32(b), P's earnings and profits are increased by \$100 (S's \$50 of undistributed earnings and profits, plus P's receipt of the \$50 distribution). Thus,

S's earnings and profits increase by \$50 and P's earnings and profits increase by \$100.

(d) Assume, instead, that after P forms S on January 1 of Year 1 with a \$100 capital contribution, S borrows additional funds and has a \$150 deficit in earnings and profits during Year 1. The corresponding loss for tax purposes is not absorbed in Year 1 because the group has a consolidated net operating loss for Year 1. Instead, S's loss is included in the group's consolidated net operating loss carried forward to Year 2. Under paragraph (b)(1) of this section, however, S's \$150 deficit in earnings and profits decreases P's earnings and profits for Year 1 by \$150.

Example 2. Section 355 distribution. (a) P owns all of S's stock and S owns all of T's stock. During Year 1, T has \$100 of earnings and profits. Under paragraph (b)(1) of this section, the earnings and profits of T tier up to S and to P. S and P have no other earnings and profits for Year 1. On December 31 of Year 1, S distributes T's stock to P in a distribution to which section 355 applies.

(b) Because S's distribution of T's stock is not a distribution to which section 301 applies, the applicable principles of § 1.1502-32(b)(3)(iv) do not require P's earnings and profits to be adjusted by reason of the distribution. In addition, although S's earnings and profits may be reduced under section 312(h) as a result of the distribution, the applicable principles of § 1.1502-32(b)(3)(iii) generally would not require P's earnings and profits to be adjusted to reflect this reduction in S's earnings and profits.

Example 3. Allocating earnings and profits among shares. P owns 80 percent of S's stock throughout Year 1. During Year 1, S has \$100 of earnings and profits. Under paragraph (b)(2) of this section and the allocation principles of § 1.1502-32(c), \$80 of S's earnings and profits is allocated to S's stock owned by P. Accordingly, under paragraphs (b)(1) and (2) of this section, \$80 of S's earnings and profits for Year 1 is reflected in P's earnings and profits for Year 1.

(c) *Special rules.* For purposes of this section—

(1) *Stock*—(i) *Dispositions.* For purposes of determining P's earnings and profits from the disposition of S's stock, P's basis (or excess loss account) in S's stock is adjusted to reflect the allocable part of S's earnings and profits determined under paragraph (b) of this section, rather than under § 1.1502-32. Thus, P's basis in S's stock is increased by positive earnings and profits and decreased by deficits. P may have an excess loss account in S's stock for earnings and profits purposes, and the excess loss account is determined, adjusted, and taken into account in accordance with the principles of §§ 1.1502-19 and 1.1502-32.

(ii) *Distributions.* A distribution with respect to S's stock to which section 301 applies is taken into account by members as S's shareholders become entitled to the distribution. For example, if P becomes entitled to the distribution

before it is made, S is treated as distributing the amount to P at the time P becomes entitled to the distribution. If it is later established, based on all of the facts and circumstances, that the distribution will not be made, the initial adjustment is reversed as of when it was made. If S's stock is not wholly owned by members of the consolidated group, proper adjustments must be made to take this fact into account in carrying out the purposes of this paragraph (c)(1)(ii).

(2) *Intercompany transactions.*

[Reserved]

(3) *Example.* The principles of this paragraph (c) are illustrated by the following example.

Example. Adjustments to stock basis. (a) P forms S on January 1 of Year 1 with a \$100 capital contribution. S has \$100 of earnings and profits during Year 1 and no earnings and profits during Year 2. During Year 2, S declares and distributes a \$50 dividend to P. On December 31 of Year 2, P sells all of S's stock for \$150.

(b) Under paragraph (c)(1) of this section, P's basis in S's stock immediately before the sale for earnings and profits purposes is \$150 (the \$100 initial basis, plus S's \$100 of earnings and profits for Year 1, minus the \$50 distribution out of earnings and profits in Year 2). Thus, P recognizes no gain or loss from the sale of S's stock for earnings and profits purposes and the sale does not affect P's earnings and profits for Year 2.

(c) Assume, instead, that P forms S on January 1 of Year 1 with a \$100 capital contribution and S has a \$100 deficit in earnings and profits for Year 1. The corresponding loss for tax purposes is not absorbed in Year 1 because the group has a consolidated net operating loss for Year 1. Instead, S's tax loss is included in the group's consolidated net operating loss carried forward to Year 2. Under paragraph (b)(1) of this section, S's \$100 deficit in earnings and profits decreases P's earnings and profits for Year 1. Under paragraph (c)(1) of this section, P decreases its basis in S's stock from \$100 to \$0 for purposes of determining earnings and profits. If S had borrowed an additional \$50 that it also lost in Year 1, P would have decreased its earnings and profits for Year 1 by the additional \$50. In addition, P would decrease its basis in S's stock from \$100 to \$0 for purposes of earnings and profits, and P would have had a \$50 excess loss account in S's stock that would be taken into account on P's disposition of S's stock.

(d) *Federal income tax liability—(1) In general—(i) Extension of tax allocations.* Section 1552 allocates the tax liability of a consolidated group among its members for purposes of determining the amounts by which their earnings and profits are reduced by taxes. Section 1552 does not accurately reflect the use by one member of another member's deductions and losses. For example, if P's \$100 of income is offset by S's \$100 of

deductions, consolidated tax liability is \$0 and no amount may be allocated under section 1552. Nevertheless, members may compensate other members for the absorption of losses or credits. In addition, the group may elect under this paragraph (d) to allocate additional amounts to reflect the compensation of regular tax liability as defined in section 26(b). Permissible methods are set forth in paragraphs (d) (2) through (4), and election procedures are described in paragraph (d)(5) of this section. The group must maintain adequate records to substantiate its allocations, and any computations of separate return tax liability are subject to the principles of section 1561.

(ii) *Effect of extended tax allocations.* The amounts allocated under this paragraph (d) are treated as allocations of tax liability for purposes of § 1.1552-1(b)(2). For example, if P's taxable income is offset by S's tax loss and tax liability is allocated under the percentage method of paragraph (d)(3) of this section, P's earnings and profits are reduced as if its income were subject to tax and P is treated as liable to S for that amount, and corresponding adjustments are made to S's earnings and profits. If the liability of one member to another is not paid, the amount not paid generally is treated as a distribution, contribution, or both, depending on the relationship between the members.

(2) *Wait-and-see method.* The wait-and-see method under this paragraph (d)(2) is derived from Securities and Exchange Commission procedures. In the year that a member's loss or credit is absorbed, the group's consolidated tax liability is allocated in accordance with the group's method under section 1552. When, in effect, the member with the loss or credit could have absorbed the attribute on a separate return basis in a later year, a portion of the group's consolidated tax liability for the later year that is otherwise allocated to members under section 1552 is reallocated. The reallocation takes into account all consolidated return years to which this paragraph (d) applies (the "computation period"), and is determined by comparing the tax allocated to a member during the computation period with the member's tax liability determined as if it had filed separate returns.

(i) *Cap on allocation under section 1552.* A member's allocation under section 1552 for a taxable year may not exceed the excess, if any, of—

(A) The total of the tax liabilities of the member for the computation period (including the current year), determined

as if the member had filed separate returns for all the years; over

(B) The total account allocated to the member under section 1552 and this paragraph (d) for the computation period (except the current year).

(ii) *Reallocation of capped amounts.* To the extent that the amount allocated to a member under section 1552 exceeds the limitation under paragraph (d)(2)(i) of this section, the excess is allocated among the remaining members in proportion to (but not to exceed the amount of) each member's excess, if any, of—

(A) The total of the tax liabilities of the member for the computation period (including the current year), determined as if the member had filed separate returns for all the years; over

(B) The total account allocated to the member under section 1552 and this paragraph (d) for the computation period (including for the current year only the amount allocated under section 1552).

(iii) *Reallocation of excess capped amounts.* If the reductions under paragraph (d)(2)(i) of this section exceed the amounts allocable under paragraph (d)(2)(ii) of this section, the excess is allocated among the members in accordance with the group's method under section 1552 without taking this paragraph (d)(2) into account.

(3) *Percentage method.* The percentage method under this paragraph (d)(3) allocates tax liability based on the absorption of losses or credits, without taking into account the ability of any member to subsequently absorb its own attributes. The allocation under this method is in addition to the allocation under section 1552.

(i) *Decreased earnings and profits.* A member's allocation under section 1552 for any year is increased, thereby decreasing its earnings and profits, by a fixed percentage (not to exceed 100 percent) of the excess, if any, of—

(A) The member's separate return tax liability for the consolidated return year as determined under § 1.1552-1(a)(2)(ii); over

(B) The amount allocated to the member under section 1552.

(ii) *Increased earnings and profits.* An amount equal to the total decrease in earnings and profits under paragraph (d)(3)(i) of this section (including amounts allocated as a result of a carryback) increases the earnings and profits of the members whose attributes are absorbed, and is allocated among them in a manner that reasonably reflects the absorption.

(4) *Additional methods.* Tax liability may be allocated among members in

accordance with any other method approved by the Commissioner.

(5) *Election of allocation method.* Tax liability may be allocated under this paragraph (d) only if an election is filed with the group's first return. The election must—

(i) Be made in a separate statement entitled "ELECTION TO ALLOCATE TAX LIABILITY UNDER § 1.1502-33 (d)";

(ii) Identify the allocation method elected under § 1.1502-33 (d) and under section 1552;

(iii) If the percentage method is elected, identify the percentage (not to exceed 100 percent) to be used; and

(iv) If a method is permitted under paragraph (d)(4) of this section, attach evidence of approval of the method by the Commissioner. A later election, or an election to change methods, may be made only with the consent of the Commissioner. If an election was made under § 1.1502-33 (d) as in effect before [the date the final regulations are filed with the Federal Register] (as contained in the CFR edition revised as of April 1, 1992), that election remains in effect under this section.

(6) *Examples.* The principles of this paragraph (d) are illustrated by the following examples.

Example 1. Wait-and-see method. (a) P owns all of the stock of S1 and S2. The P group elects in accordance with paragraph (d)(5) of this section to use the wait-and-see method of allocation under paragraph (d)(2) of this section in conjunction with § 1.1552-1(a)(1). During Year 1, each member's taxable income, determined as if the member had filed separate returns and under § 1.1552-1(a)(1), is as follows: P \$0, S1 \$2,000, and S2 (\$1,000). Thus, the P group's consolidated tax liability for Year 1 is \$340 (assuming a 34 percent tax rate).

(b) Under § 1.1552-1(a)(1)(i), the tax liability of the P group is allocated among the members in accordance with the portion of the consolidated taxable income attributable to each member having taxable income. Thus, all of the P group's \$340 consolidated tax liability is allocated to S1 under section 1552. As a result, S1 decreases its earnings and profits by \$340 even if S1 does not pay the tax liability. No further allocations are made under paragraph (d)(2) of this section because S2 cannot yet absorb its loss on a separate return basis.

(c) If S1 pays the \$340 tax liability there is no further effect on the income, earnings and profits, or stock basis of any member. If P pays the \$340 tax liability (and the payment is not a loan from P to S1), P is treated as making a \$340 contribution to the capital of S1; if S2 pays the \$340 tax liability (and the payment is not a loan from S2 to S1), S2 is treated as making a \$340 distribution to P with respect to its stock, and P is treated as making a \$340 contribution to the capital of S1. See § 1.1552-1(b)(2).

(d) During Year 2, each member's taxable income, determined as if the member had

filed separate returns and under § 1.1552-1(a)(1)(ii), without taking into account any carryover from Year 1, is as follows: P \$0, S1 \$1,000, and S2 \$3,000. Thus, the P group's consolidated tax liability for Year 2 is \$1,360 (assuming a 34 percent tax rate). Of this amount, section 1552 would allocate \$340 to S1 and \$1,020 to S2. However, under paragraph (d)(2)(i) of this section, no more than \$680 may be allocated to S2. This is because S2 would have had an aggregate tax liability of \$680 if it had filed separate returns for Years 1 and 2 (a \$0 tax liability for Year 1, and a \$680 tax liability for Year 2, taking into account a \$1,000 net operating loss carryover from Year 1). Under paragraph (d)(2)(ii) of this section, the entire excess of \$340 which would otherwise be allocated to S2 under § 1.1552-1(a)(1) is allocated to S1. This is because S1 would have had an additional \$340 of aggregate tax liability if it had filed separate returns for Years 1 and 2 (a \$680 tax liability for Year 1, and a \$340 tax liability for Year 2, not taking into account S2's \$1,000 net operating loss for Year 1). The effect of the allocation of \$680 to S1 and \$680 to S2 is determined under § 1.1552-1(b)(2).

Example 2. Percentage method. (a) The facts are the same as in Example 1, but the P group elects in accordance with paragraph (d)(5) of this section to use the percentage method of allocation under paragraph (d)(3) of this section, choosing a percentage of 100 percent. In addition, the taxable incomes and losses of the members are the same if computed as provided in § 1.1552-1(a)(2)(ii).

(b) Under § 1.1552-1(a)(2)(ii), \$340 of tax liability is allocated to S1 for Year 1. Under paragraph (d)(3)(i) of this section, S1 is allocated another \$340 liability because S1 would have had a \$680 tax liability if it had filed separate returns but only \$340 is allocated to S1 under section 1552. Thus, S1's earnings and profits are decreased by the \$680 total. Under paragraph (d)(3)(ii) of this section, S2's earnings and profits are increased by \$340 because the additional \$340 allocated to S1 under paragraph (d)(3)(i) of this section is attributable to the absorption of S2's losses.

(c) If S1 pays the \$340 tax liability of the P group and pays \$340 to S2, the Year 1 tax liability results in no further adjustments to the income, earnings and profits, or basis of any member's stock. If S1 pays the \$340 tax liability of the P group and pays the other \$340 to P instead of S2 because, for example, of an agreement among the members, S2 is treated as distributing \$340 to P with respect to its stock in the year that S1 makes the payment to P. See § 1.1552-1(b)(2).

(d) For Year 2, \$340 is allocated to S1 and \$1,020 is allocated to S2 under section 1552. No additional amounts are allocated under paragraph (d)(3) of this section.

(e) *Deconsolidations.*—(1) *In general.* Immediately before it becomes a nonmember, S's earnings and profits are eliminated to the extent they were taken into account by any member under paragraph (b) or (f) of this section. If S's earnings and profits are eliminated under this paragraph (e)(1), no corresponding adjustment is made to the earnings and profits of P (or any other

member) under paragraph (b) of this section or to any basis (or excess loss account) in a member's stock under paragraph (c) of this section. For this purpose, S is treated as becoming a nonmember on the first day of its first separate return year (including another group's consolidated return year).

(2) *Acquisition of group.* Paragraph (e)(1) of this section does not apply solely by reason of the termination of a group because it is acquired, if there is a surviving group that is, immediately thereafter, a consolidated group. This paragraph (e)(2) applies only if the terminating group ceases to exist as a result of an acquisition of the assets of its common parent in a reorganization to which section 381(a)(2) applies or an acquisition of the stock of the common parent, or it ceases to exist under the principles of § 1.1502-75 (d)(2) or (d)(3). However, this paragraph (e)(2) does not apply to the extent members of the terminating group do not become members of the succeeding group (e.g., under section 1504(c), relating to includable insurance companies).

(3) *Certain corporate separations and reorganizations.* The adjustments under paragraph (e)(1) of this section must be modified to the extent necessary to effectuate the principles of section 312(h). Thus, P's earnings and profits rather than S's earnings and profits may be eliminated immediately before S becomes a nonmember. P's earnings and profits are eliminated to the extent that its earnings and profits reflect S's earnings and profits after applying section 312(h) immediately after S becomes a nonmember (determined without taking this paragraph (e)(3) into account).

(4) *Special uses of earnings and profits.* Paragraph (e)(1) of this section does not apply for purposes of determining—

(i) The extent to which a distribution is charged to reserve accounts under section 593(e);

(ii) The extent to which a distribution is taxable to the recipient under sections 805(a)(4) and 832; and

(iii) Any other special use identified by guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(5) *Example.* The principles of this paragraph (e) are illustrated by the following example.

Example. (a) Individuals A and B own all of P's stock, and P owns all the stock of S and T, each with a \$500 basis. During Year 1, S has \$100 of earnings and profits and T has \$50 of earnings and profits. Under paragraph (b)(1) of this section, the earnings and profits of S and T tier up to P, and P has \$150 of

earnings and profits for Year 1. On December 31 of Year 1, P sells all of S's stock for \$600.

(b) Under paragraph (e)(1) of this section, S's \$100 of earnings and profits is eliminated immediately before S becomes a nonmember of the consolidated group because the earnings and profits are taken into account under paragraph (b) of this section in P's earnings and profits. However, no corresponding adjustment is made to P's earnings and profits or to P's basis in S's stock for purposes of earnings and profits. P's earnings and profits for Year 1 remain \$150 following the sale of S's stock.

(c) The facts are the same as in paragraph (a) of this *Example*, except that, on December 31 of Year 1, X, the common parent of another consolidated group, purchases all of P's stock and P sells S's stock during Year 3. Under paragraph (e)(2) of this section, the earnings and profits of S and T are not eliminated as a result of X purchasing P's stock. However, S's earnings and profits from consolidated return years of both the P group and the X group are eliminated immediately before S becomes a nonmember of the X group.

(d) The facts are the same as in paragraph (c) of this *Example*, except that S has a \$550 deficit in earnings and profits during Year 1. The effect of paragraph (e)(1) of this section is the same. Under paragraph (c)(1) of this section, P would have an excess loss account in S's stock for earnings and profits purposes under the principles of §§ 1.1502-19 and 1.1502-32, and, under the principles of § 1.1502-19(c)(2), the excess loss account is not taken into account as a result of X's purchase of P's stock. Under paragraph (e)(2) of this section, S's deficit is not eliminated under paragraph (e)(1) of this section immediately before X's purchase of P's stock. However, S's earnings and profits deficit is eliminated immediately before S becomes a nonmember of the X group.

(e) The facts are the same as in paragraph (a) of this *Example*, except that, on December 31 of Year 1, rather than selling S's stock, P distributes S's stock to A in a distribution to which section 355 applies. Under paragraph (e)(3) of this section, P's earnings and profits may be reduced under section 312(h) as a result of the distribution. To the extent that P's earnings and profits are reduced, S's earnings and profits are not eliminated under paragraph (e)(1).

(f) *Changes in the structure of the group*—(1) *General rule*. If P succeeds another corporation under the principles of § 1.1502-75(d) (2) or (3) as the common parent of a group (a group structure change), the earnings and profits of P are adjusted immediately after it becomes the new common parent to reflect the earnings and profits of the other corporation immediately before the other corporation ceases to be the common parent. The adjustment is made as if P succeeds to the earnings and profits of the other corporation in a transaction described in section 381(a). See § 1.1502-31 for modifications to the basis (or excess loss account) in the stock of members resulting from a group structure change.

(2) *Minority ownership*. If the other corporation's stock is not wholly owned by members of the consolidated group immediately after it ceases to be the common parent, proper adjustments must be made to take this fact into account in carrying out the purposes of this paragraph (f).

(3) *Higher tier members*. To the extent that the former common parent is owned by members other than P, the earnings and profits of the intermediate subsidiaries must be adjusted consistent with the principles of this section.

(4) *Examples*. The principles of this paragraph (f) are illustrated by the following examples.

Example 1. Stock acquisition. (a) On December 31 of Year 1, P is the common parent of a group with \$100 of earnings and profits, and X, the common parent of another consolidated group, has \$20 of earnings and profits. On December 31, of Year 1, X acquires all of P's stock in exchange for 70 percent of X's stock. The exchange is a reverse acquisition under § 1.1502-75(d)(3), and the P group is treated as remaining in existence with X as its new common parent.

(b) Under paragraph (f) of this section, X's earnings and profits are adjusted to reflect P's \$100 of earnings and profits immediately before P ceases to be the common parent. The adjustment is made as if X succeeds to P's earnings and profits in a transaction described in section 381(a). Thus, immediately after the acquisition, X has \$120 of accumulated earnings and profits and P continues to have \$100 of accumulated earnings and profits.

(c) Although the X group terminates on X's acquisition of P's stock, under paragraph (e)(2) of this section, no adjustments are made to the earnings and profits of any subsidiaries in the terminating X group.

(d) The facts are the same as in paragraph (a) of this *Example 1*, except that, immediately before the acquisition of its stock by X, P is not affiliated with any other corporation. The exchange is a reverse acquisition under § 1.1502-75(d)(3), and the P group is treated as remaining in existence with X as its new common parent. Consequently, the results are the same as in paragraphs (b) and (c) of this *Example 1*.

Example 2. Merger of subsidiary into common parent. (a) On December 31 of Year 1, P is the common parent of a group with \$300 of earnings and profits, S is its wholly owned subsidiary with \$200 of earnings and profits, and T is S's wholly owned subsidiary with \$100 of earnings and profits. All of the earnings and profits were earned during the P group's consolidated return years. On December 31 of Year 1, T merges into P pursuant to a plan of reorganization, and the shareholders of P exchange all of their P stock for S stock. As a result, P becomes a first tier subsidiary of S. The P group is treated as remaining in existence with S as its new common parent under the principles of § 1.1502-75(d).

(b) Under paragraph (f) of this section, S's earnings and profits are adjusted to reflect P's \$300 of earnings and profits immediately

before P ceases to be the common parent. Because S's \$200 of earnings and profits is reflected in P's \$300 of earnings and profits before the transaction, S's earnings and profits are increased by only \$100—from \$200 to \$300—immediately after S becomes the new common parent to prevent earnings and profits from being duplicated. Similarly, P's earnings and profits remain \$300, because T's \$100 of earnings and profits is reflected in P's \$300 of earnings and profits before the transaction.

(g) *Overriding adjustments*. If any person acts with a principal purpose to avoid the effect of the rules of this section, adjustments must be made as necessary to carry out the purposes of this section.

(h) *Predecessors and successors*. For purposes of this section, any reference to a corporation or to a share includes a reference to a successor or predecessor as the context may require. A corporation is a successor if its earnings and profits are determined, directly or indirectly, in whole or in part, by reference to the earnings and profits of another corporation (the predecessor). A share is a successor if its basis (or excess loss account) is determined, directly or indirectly, in whole or in part, by reference to the basis (or excess loss account) of another share (the predecessor).

(i) [Reserved]

(j) *Effective date*—(1) *General rule*. This section applies with respect to determinations (e.g., for purposes of a distribution with respect to stock, or an adjustment under section 312(h)) on or after [the date the final regulations are filed with the Federal Register]. If this section applies, earnings and profits must be determined or redetermined as if this section were in effect for all consolidated return years of the group. For this purpose, if P and S cease to be members of one consolidated group and become members of another consolidated group, but paragraph (e)(1) of this section does not apply, the consolidated return years of the prior group are also taken into account.

(2) *Dispositions of stock before effective date*. If P disposes of stock of S before [the date the final regulations are filed with the Federal Register], the amount of P's earnings and profits from the disposition is not redetermined. In addition, to the extent that P's determinations or adjustments with respect to S's stock were taken into account by P as of the disposition, the determinations or adjustments are not redetermined. Nevertheless, S's determinations or adjustments with respect to the stock of a lower tier member are redetermined in accordance with paragraph (j)(1) of this section

(even if they were previously taken into account by P and reflected in earnings and profits from the disposition of S's stock) if S disposes of the stock on or after [the date the final regulations are filed with the Federal Register].

Assume, for example, that P owns all of S's stock, S owns all of T's stock, and T owns all of U's stock. If S sells 80 percent of T's stock before [the date the final regulations are filed with the Federal Register] (the effective date), S's earnings and profits from the sale, and the stock basis adjustments taken into account by S in the sale, are not redetermined if P sells S's stock after the effective date. If S sells the remaining 20 percent of T's stock after the effective date, S's stock basis adjustments with respect to that T stock are also not redetermined. However, if T and U become members of another consolidated group, paragraph (e)(1) of this section did not apply, and T sells U's stock after the effective date, T's stock basis adjustments with respect to U's stock are redetermined (even though some of those adjustments may have been taken into account by S in its prior sale of T's stock). See § 1.1502-19(c) for the definition of disposition.

(3) *Deconsolidations and group structure changes*—(i) *In general.* Paragraphs (e) and (f) of this section apply with respect to deconsolidations and group structure changes occurring on or after [the date the final regulations are filed with the Federal Register].

(ii) *Group structure changes before [the date the final regulations are filed with the Federal Register].* If there was a group structure change before [the date the final regulations are filed with the Federal Register], and earnings and profits were not determined under § 1.1502-33T(a) (as contained in the CFR edition revised as of April 1, 1992), a distribution in a taxable year ending after September 7, 1988, of earnings and profits that are not reflected in the earnings and profits of the distributee member, but would have been so reflected if § 1.1502-33T(a) (as contained in the CFR edition revised as of April 1, 1992) had applied, no negative adjustment under paragraph (b) of this section shall offset the increase in the earnings and profits of the distributee.

(4) *Deferred amounts.* [Reserved.]

(5) *Distributions*—(i) *Deemed dividend elections.* If there is a deemed distribution and recontribution pursuant to § 1.1502-32(f)(2) (as contained in the CFR edition revised as of April 1, 1992) in a consolidated return year ending before [the date the final regulations are filed with the Federal Register], this section is applied as if the deemed distribution and recontribution under

the election were an actual distribution by S and recontribution by P as provided under the election.

(ii) *Affiliated earnings and profits.* This section does not apply to prevent an increase in P's earnings and profits as a result of a distribution of S's earnings and profits if the distribution is made before [the date the final regulations are filed with the Federal Register], and the distribution does not cause a negative adjustment under the investment adjustment rules in effect at the time of the distribution. See §§ 1.1502-32(b)(2)(iii) and (c)(2) and 1.1502-33 (as contained in the CFR edition revised as of April 1, 1992).

(6) *Prior law.* For prior determinations, see prior final and temporary regulations issued under section 1502 of the Internal Revenue Code as in effect with respect to the determination.

§ 1.1502-33T [Removed]

Par. 15. Section 1.1502-33T is removed.

Par. 16. Section 1.1502-76 is amended by revising paragraph (b) to read as follows:

§ 1.1502-76 Taxable year of members of group.

* * * * *

(b) *Items included in the consolidated return*—(1) *General rules.* A consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If a corporation becomes, or ceases to be, a member during a consolidated return year, the corporation's taxable year is treated for all federal income tax purposes as ending as of the event causing the corporation to become or cease to be a member. If the common parent ceases to be the common parent but the group remains in existence, adjustments must be made consistent with the principles of § 1.1502-75(d) (2) and (3). Unless otherwise provided under applicable law, a corporation becomes or ceases to be a member as of the close of the date on which the event occurs. The rules of this paragraph (b) are in addition to rules under other provisions of law that are not inconsistent with this paragraph (b), and the rules of this paragraph (b) and other applicable provisions of law must be applied in a manner that is consistent with and reasonably carries out the purposes of this section. See, e.g., sections 381 and 446. Thus, this paragraph (b) must be applied so as to

prevent duplication or elimination of the corporation's items.

(2) *Determination of items included in separate and consolidated returns*—(1) *In general.* The returns for the years ending and beginning with the event that causes this paragraph (b) to apply are subject to the rules of the Internal Revenue Code applicable to short periods. However, section 443 applies with respect to a consolidated return only to the extent that it is applicable without taking this paragraph (b) into account.

(ii) *Ratable allocation of items*—(A) *Application.* Although the periods ending and beginning with the event that causes this paragraph (b) to apply are treated as different taxable years, certain items may be ratably allocated between the periods if—

(1) The member is not required to change its annual accounting period as of the event (e.g., because its stock is sold between consolidated groups that have the same annual accounting periods); and

(2) An irrevocable election to ratably allocate is made under paragraph (b)(2)(ii)(D) of this section.

(B) *General rule*—(1) *Allocation within original year.* Under ratable allocation, paragraph (b)(2)(i) of this section applies by allocating to each day of a member's original year (i.e., the member's taxable year determined without taking this paragraph (b) into account) an equal portion of the member's items affecting taxable income in the original year, except that extraordinary items must be allocated to the day that they affect income.

(2) *Items to be allocated.* Under ratable allocation, the items to be allocated and their timing, location, character, and source are generally determined by treating the original year as a single taxable year, and the items are not subject to the rules of the Internal Revenue Code applicable to short periods (unless the original year is a short period). However, the years ending and beginning with the event that causes this paragraph (b) to apply are treated as different taxable years (and as short periods) with respect to any item carried to or from these years (e.g., a net operating loss carried under section 172) and with respect to the application of section 481.

(3) *Multiple applications.* If this paragraph (b) applies more than once with respect to an original year, adjustments must be made consistent with the principles of this paragraph (b). For example, if an existing corporation becomes a member of two different consolidated groups during the same

original year and ratable allocation is elected with respect to both groups, ratable allocation is generally determined for both groups by treating the original year as a single taxable year; however if ratable allocation is elected only with respect to the first group the ratable allocation is determined by treating the original year as a short period that does not include the period that the corporation is a member of the second group. Ratable allocation is not a method of accounting, and ratable allocation with respect to one event that causes this paragraph (b) to apply does not require ratable allocation to be applied with respect to a subsequent event.

(C) *Extraordinary items* An extraordinary item is—

(1) Any income, gain, or loss from the disposition or abandonment of a capital asset as defined in section 1221 (determined without the application of any other provision of law);

(2) Any income, gain, or loss from the disposition or abandonment of property used in a trade or business as defined in section 1231(b) (determined without the application of any holding period requirement);

(3) Any income, gain, or loss from the disposition or abandonment of an asset described in section 1221 (1), (3), (4), or (5), if substantially all the assets in such category from the same trade or business are disposed of in one transaction (or series of related transactions);

(4) Any income, gain, or loss from assets disposed of in an applicable asset acquisition under section 1060(c);

(5) Any item carried to or from any portion of the original year (e.g., a net operating loss carried under section 172) and any section 481(a) adjustment;

(6) The effects of any change in accounting method initiated by the filing of Form 3115 after becoming or ceasing to be a member;

(7) Any income from a discharge of indebtedness;

(8) Any interest expense allocable under section 172(h) to a corporate equity reduction transaction causing this paragraph (b) to apply;

(9) Any credit to the extent arising from activities or items that are not ratably allocated (e.g., the rehabilitation credit under section 47, which is based on placement in service);

(10) Any deemed income inclusion from a foreign corporation, or any deferred tax amount on an excess distribution from a passive foreign investment company under section 1291; and

(11) Any item which, in the opinion of the Commissioner, would if ratably

allocated, result in a substantial distortion of income in any consolidated return or separate return in which the item is included.

(D) *Election*. The election to ratably allocate items must be made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-76(b)(2) TO RATABLY ALLOCATE ITEMS OF [insert name and employer identification number of the member]." The statement must—

(1) Identify the member's extraordinary items, their amounts, and the separate or consolidated returns in which they are included;

(2) Identify the member's aggregate amount to be ratably allocated, and the portion of the amount included in the separate and consolidated returns; and

(3) Include the name and employer identification number of the common parent (if any) of each group that must take the items into account. The statement must be signed by the member and by the common parent of any group that must take into account the items, and filed with the returns including the items for the years ending and beginning as of the event that causes this paragraph (b) to apply. A copy of the election must be retained by each corporation signing the election. If more than one member of the same consolidated group, as a consequence of the same plan or arrangement, cease to be members of that group and become members of another consolidated group, an election under this paragraph (b)(2)(ii)(D) may be made only if it is made by each such member.

(iii) *Taxes*. To the extent properly taken into account during the member's taxable year (determined without the application of this paragraph (b)), federal, state, local, and foreign taxes are allocated under paragraphs (b)(2)(i) and (ii) of this section on the basis of the items or activities to which the taxes relate. Thus, income tax is allocated based on the inclusion of the income (determined under the principles of this paragraph (b)) to which the tax relates. For example, if a calendar-year domestic corporation has \$100 of foreign source dividend income (determined in accordance with United States tax accounting principles but without taking this paragraph (b) into account) that for purposes of section 904 is passive income, and \$60 of that income is allocated under this paragraph (b) to the period of the calendar year after it becomes a member of a consolidated group, then 60 percent of the corporation's deemed paid foreign tax credit associated with its dividend income for the calendar year is taken into account in computing the group's

passive basket consolidated foreign tax credit. This paragraph (b)(2)(iii) applies without regard to any determination or allocation by another taxing jurisdiction.

(iv) *Passthrough entities*—(A) *In general*. If a member is a partner in a partnership or an owner of a similar interest with respect to which items of the entity are taken into account by the member the member is treated solely for purposes of determining the year to which the entity's items are allocated under paragraphs (b)(2)(i) and (ii) of this section, as selling or exchanging its entire interest in the entity as of the event that causes this paragraph (b) to apply.

(B) *Treatment as a conduit*. For purposes of this paragraph (b)(2), if a member (together with other members) would be treated under section 318(a)(2) as owning an aggregate of at least 50 percent of any stock owned by the passthrough entity, the method that is used to determine the inclusion of the entity's items in the consolidated or separate return must be the same method that is used to determine the inclusion of the member's items in the consolidated or separate return.

(C) *Exception for certain foreign entities*. This paragraph (b)(2)(iv) does not apply to any foreign corporation generating the deemed inclusion of income, or to any passive foreign investment company generating a deferred tax amount on an excess distribution under section 1291.

(3) *Examples*. For purposes of the examples in this paragraph (b), unless otherwise stated, P and X are common parents of calendar-year consolidated groups, P owns all of T's stock, T has only one class of stock outstanding, T owns no stock of lower tier members, the facts set forth the only corporate activity, all transactions are between unrelated persons, tax liabilities are disregarded, and any election required under paragraph (b)(2) of this section is properly made. The principles of this paragraph (b) are illustrated by the following examples:

Example 1. Items allocated between consolidated and separate returns. (a) P and T are the only members of the P group. On June 30 of Year 2, P sells all of T's stock to individual A.

(b) Under paragraph (b)(1) of this section, P's consolidated return for Year 2 includes P's income for the entire taxable year and T's income for the period from January 1 to June 30, and T must file a separate return for the period from July 1 to December 31.

(c) The facts are the same as in paragraph (a) of this *Example 1*, except that, on July 31 of Year 2, P acquires all the stock of S (which filed a separate return for its year ending on November 30 of Year 1). Under paragraph

(b)(1) of this section, P's consolidated return for Year 2 includes P's income for the entire year, T's income from January 1 to June 30, and S's income from August 1 to December 31. T must file a separate return that includes its income from July 1 to December 31, and S must file a separate return that includes its income from December 1 of Year 1 to July 31 of Year 2.

Example 2. Group remains in existence with a new common parent. (a) P owns all of the stock of S and T. Shortly after the beginning of Year 1, P merges into T in a reorganization to which section 368(a)(1)(A) applies (and is also described in section 368(a)(1)(D)), and P's shareholders receive T's stock in exchange for all of P's stock. The P group is treated under § 1.1502-75(d)(2)(ii) as remaining in existence with T as its common parent.

(b) Under paragraph (b)(1) of this section, the P group's return must include the common parent's items for the entire consolidated return year and, if the common parent ceases to be the common parent but the group remains in existence, appropriate adjustments must be made. Consequently, although P did not exist for all of Year 1, P's items for the portion of Year 1 ending with the merger are treated as the items of the common parent that must be included in the P group's return for Year 1.

(c) Assume, instead, that X acquires all of P's assets in exchange for more than 50 percent of X's stock in a reorganization to which section 368(a)(1)(C) applies. The reorganization constitutes a reverse acquisition under § 1.1502-75(d)(3), with the X group terminating and the P group surviving with X as its common parent. Consequently, P's items for the portion of Year 1 ending with the acquisition are treated as the items of the common parent that must be included in the P group's return for Year 1, and X's items are treated for purposes of paragraph (b)(1) of this section as the items of a subsidiary included in the P group's return for the portion of Year 1 beginning with the acquisition.

Example 3. Ratable allocation. (a) On June 30 of Year 1, P sells all of T's stock to X. T engages in the production and sale of merchandise throughout Year 1 and is required to use inventories. The sale is treated as causing T's taxable year to end on June 30, and the periods beginning and ending with the sale are treated as two taxable years for federal income tax purposes. If ratable allocation under paragraph (b)(2)(ii) of this section is not elected, T must perform an inventory valuation as of the acquisition and also as of the end of Year 1.

(b) If ratable allocation is elected, T must perform an inventory valuation only as of the close of Year 1, and T's income from inventory is ratably allocated, along with T's other items that are not extraordinary items, between the P and X consolidated returns.

(c) Assume instead that T merges into a wholly owned subsidiary of X in a reorganization to which section 368(a)(2)(D) applies, and P receives X's stock in exchange for all of T's stock. Under paragraph (b)(2)(ii)(B) of this section, because T's taxable year ends on June 30 under section 381(b)(1), T's original year determined

without taking paragraph (b) of this section into account also ends on June 30. Consequently, a ratable allocation under paragraph (b)(2)(ii) of this section is the same as an allocation under paragraph (b)(2)(i) of this section.

Example 4. Net operating loss. On June 30 of Year 1, P sells all of T's stock to X and ratable allocation under paragraph (b)(2)(ii) of this section is elected. Under ratable allocation, the X group has a \$100 consolidated net operating loss for Year 1, all of which is attributable to T under the principles of § 1.1502-79. However, because of extraordinary items, T has \$100 of income for the portion of Year 1 that T is a member of the P group. Under paragraph (b)(2)(ii)(B) of this section, T's loss may be carried back from the X group to the portion of Year 1 that T was a member of the P group. See also section 172 and § 1.1502-21 (b). Under paragraph (b)(2)(ii)(C)(5) of this section, any item carried to or from any portion of the original year is an extraordinary item, and the loss therefore is not taken into account again in determining the ratable allocation under paragraph (b)(2)(ii) of this section.

Example 5. Employee benefit plans. (a) On June 30 of Year 1, P sells all of T's stock to X. On March 15 of Year 2, T contributes \$100 to its retirement plan, which is a qualified plan under section 401 (a). T is not required to make quarterly contributions to the plan for Year 1 under section 412(m). The contribution is deemed in accordance with section 404(a)(6) to have been made on the last day of T's taxable period beginning on July 1 of Year 1. Ratable allocation under paragraph (b)(2)(ii) of this section is not elected.

(b) Under paragraph (b)(2)(i) of this section, the sale is treated as causing T's taxable year to end on June 30, and the period beginning on July 1 is treated as a separate annual accounting period for all federal income tax purposes. T's income from January 1 to June 30 is included in the P group's Year 1 return, and T's income from July 1 to December 31 is included in the X group's Year 1 return. Thus, the \$100 contribution is deductible by T for the period of Year 1 that it is a member of the X group, subject to the applicable limitations of section 404, if a contribution on the last day of that period would otherwise be deductible.

(c) The facts are the same as in paragraph (a) of this Example 5, except that, in accordance with section 404(a)(6), \$40 of the \$100 contribution is deemed to be made on the last day of T's taxable period beginning on January 1 of Year 1, and the remaining \$60 is deemed to be made on the last day of T's taxable period beginning on July 1 of Year 1. As in paragraph (b) of this Example 5, under paragraph (b)(2)(i) of this section, the sale is treated as causing T's taxable year to end on June 30, and the period beginning on July 1 is treated as a separate annual accounting period for all federal income tax purposes. The \$40 portion of the contribution is deductible by T for the period of Year 1 that it is a member of the P group, subject to the applicable limitations of section 404 and provided that a \$40 contribution on the last day of that period would otherwise be deductible for that period, and the \$60 portion

is deductible by T for the period of Year 1 that it is a member of the X group, subject to the same conditions.

(d) The facts are the same as in paragraph (a) of this Example 5, except that P, T, and X elect ratable allocation under paragraph (b)(2)(ii) of this section and T's deduction for the retirement plan contribution is not an extraordinary item. T's deduction may be ratably allocated, subject to the applicable limitations of section 404, and is allowable only if a contribution on the last day of Year 1 otherwise would be deductible for any period in the year.

Example 6. Allocation of partnership items.

(a) On June 30 of Year 1, P sells all of T's stock to X. T has a 10 percent interest in the capital and profits of a calendar-year partnership.

(b) Under paragraph (b)(2)(iv)(A) of this section, T is treated, solely for purposes of determining T's taxable year in which the partnership's items are included, as selling or exchanging its entire interest in the partnership as of P's sale of T's stock. Thus, the deemed disposition is not taken into account under section 708, it does not result in gain or loss being recognized by T, and T's holding period is unaffected. However, under section 706(a) in determining T's income, T is required to include its distributive share of partnership items for the partnership's year ending within or with T's taxable year. Under section 706(c)(2), the partnership's taxable year is treated as closing with respect to T for this purpose as of P's sale of T's stock. The allocation of T's distributive share of partnership items must be made under § 1.706-1(c)(2)(ii).

(c) Assume the same facts as in paragraph (a) of this Example 6, except that T has a 75 percent interest in the capital and profits of the partnership. Under paragraph (b)(2)(iv)(B) of this section, T's distributive share of the partnership's items is treated as T's items for purposes of paragraph (b)(2) of this section. Thus, if ratable allocation under paragraph (b)(2)(ii) of this section is not elected, T's distributive share of the partnership's items must be determined under § 1.706-1(c)(2)(ii) by an interim closing of the partnership's books. Similarly, if ratable allocation is elected for T's items that are not extraordinary items, T's distributive share of the partnership's nonextraordinary items must also be ratably allocated under § 1.706-1(c)(2)(ii).

(4) **Effective date—(i) General rule.** This paragraph (b) applies with respect to corporations becoming or ceasing to be members of consolidated groups on or after [the date the final regulations are filed with the Federal Register].

(ii) **Prior law.** For corporations becoming or ceasing to be members of consolidated groups before this paragraph (b) applies, see prior § 1.1502-76 (b) and (d) (as contained in the CFR edition revised as of April 1, 1992). However, § 1.1502-76(b)(5) (as contained in the CFR edition revised as of April 1, 1992) does not apply with respect to corporations becoming or

ceasing to be members of consolidated groups on or after December 1, 1992.

§ 1.1502-76 [Removed]

Par. 17. Paragraph (d) of § 1.1502-76 is removed.

Par. 18. Section 1.1502-80 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 1.1502-80 Applicability of other provisions of law.

(c) *Deferral of section 165(g).* For consolidated return years ending on or after [the date the final regulations are filed with the Federal Register], stock of a member may not be treated as worthless under section 165(g) until the stock is treated as disposed of under § 1.1502-19(c)(1)(iii). See §§ 1.1502-11(c) and 1.1502-20 for additional rules relating to stock loss.

(d) *Non-applicability of section 301(c)(3).* Section 301(c)(3) does not apply to any transfer between members occurring on or after [the date the final regulations are filed with the Federal Register]. For prior transfers between members, see § 1.1502-14 (as contained in the CFR edition revised as of April 1, 1992).

(e) *Non-applicability of section 357(c).* Section 357(c) does not apply to any transfer between members occurring on or after [the date the final regulations are filed with the Federal Register]. This exception does not apply if the transferee becomes a nonmember as part of the same plan or arrangement, unless the transferor and transferee continue to be members of the same consolidated group. A corporation is treated as becoming a nonmember if it has a separate return year (including another group's consolidated return year).

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-26773 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, and 817

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Administrative Practice and Procedure; Underground Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) seeks comments concerning the rule changes suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The petition suggests OSM amend its regulations governing the review of permit applications (30 CFR 773.15) and also amend other regulations as necessary to refine the meaning and application of the term "Surface Effects Area" to underground coal mining. The term "Surface Effects Area" does not exist in OSM's regulations or in the Indiana state program regulations which are required by the act to be in accordance with its requirements and consistent with its implementing Federal regulations. However, this term is used by the Indiana Department of Natural Resources in its everyday operations addressing the regulation of underground mining and as such has a "working definition" with practical significance for the rights of surface owners. Comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on December 14, 1992.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660-NC, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-3839 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background and Substance of Petition

III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the suggested change should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where

practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition, copies of 30 CFR 773.15, and other OSM and Indiana state program regulations relevant to the term "Surface Effects Area" as it applies to underground coal mining are available for inspection and may be obtained at the location listed under **ADDRESSES**.

Public Hearing

OSM will not hold a public hearing on the proposed revision, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m. during the comment period. In order to arrange such a meeting, call or write to the person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background and Substance of Petition

OSM received a letter dated September 29, 1992, from Jim B. Wyant, a citizen of Indiana, as a petition for rulemaking. The petitioner requested that 30 CFR 773.15 be amended to require that a final decision be made on a permit application within 150 days following an informal conference. The petitioner also requests that the regulations be changed to require that persons within the "Surface Effects Area" of a proposed underground coal mine be notified concerning the proposed mining. The text of the petition appears at the end of this notice.

The term "Surface Effects Area" is not used in the Federal regulations. The Federal regulations use the term affected area (30 CFR 701.5) to describe those areas effected by surface or underground coal mining and including * * * "the area located above underground workings." Likewise in the Indiana regulations there is no specific definition for "Surface Effects Area" although it is OSM's understanding that the term is used by the regulatory authority in conducting its activities. Both the Federal and Indiana regulations address the impact of underground mining on surface resources and the rights of surface owners. OSM encourages commenters to consider whether or not the regulations adequately protect the rights

of surface owners from the impacts of underground mining.

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before a final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step prior to the initiation of the rulemaking process. If a decision is made to grant the petition, a rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(a)(c), is needed.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining,
Underground mining

30 CFR Part 773

Administrative practice and
procedure, Reporting and recordkeeping
requirements, Surface mining,
Underground mining

30 CFR Part 817

Environmental protection, Reporting
and recordkeeping requirements,
Underground mining.

Dated November 3, 1992

Harry M. Snyder,

Director

Appendix

The text of the petition dated September 29, 1992 (received October 7, 1992), from Jim B. Wyant is as follows:

Mr. Harry M. Snyder,
Office of the Director,
Office of Surface Mining Reclamation &
Enforcement,
U.S. Department of the Interior
1951 Constitution Ave., NW
Washington, DC 20240.
September 29, 1992.

Dear Mr. Snyder: The purpose of this letter is to formally request an amendment to 30 CFR 773.15 "Review of Permit Applications" and for issuance of regulations better defining "Surface Effects Area" as these items relate to underground coal mines. I represent the feelings of several neighbors who attended an informal conference on Nov. 13, 1991, objecting to the impact of an underground coal mine permit. It is our experience with this application process which has prompted this letter requesting changes.

The Indiana Dept. of Natural Resource's Division of Reclamation held an informal conference as prescribed by law upon request by several area residents. We expressed many concerns and issues at this conference and were complimented for the organized and professional manner in which we conducted the presentation of these concerns and issues. The mining company applying for this permit has never conducted underground mining activities before and has already had to modify their operations plan substantially due to the likely denial of their plan to construct a levee and due to concerns over a refuse area originally planned for a flood plain. We and our concerns have virtually been ignored ever since the informal conference. Although we have not received any correspondence, the mining company has received an eight page modification letter dated Jan. 7, 1992 in which to comply with.

This is where current regulations do not protect the interest of citizens and other objectors to such a permit. We feel the system is set up to afford us an informal conference once the authorities have reviewed the permit and are in a position to respond to concerns and issues presented as well as to issue changes deemed necessary to comply with existing regulatory requirements. We have been told that once the modification letter has been sent to the coal company, they have an unlimited time to respond. Conceivably, it could be 10 to 15 years before we could have a response to the concerns raised at the informal conference held even now almost 1 year ago. Even 1 year is too long a period for a permit to be in this status. Meanwhile, our property's value is impacted by the possibility and uncertainty of a tipple being located in close proximity.

It is ironic that once permitted a mine must begin operation within 3 years (Pub. L. 95-87 sec. 506(c)), but the permit can stay at its current pending status, ignoring indefinitely the response and decision which participants

who were at the informal conference have a right to expect. In reading Public Law 95-87 section 514, we feel it was this law's intent to provide a reasonably quick decision on permit applications once an informal conference has been held. We feel that if the application is substantially inadequate at this stage, the permit should be denied and a new application made at a later date when more data has been provided to ensure protection of residents, the environment, and the miner's safety.

It is for the above reasons that we are requesting that 30 CFR 773.15 be amended to require a final decision to be made on a permit application within 150 days following an informal conference. We also feel a response should be required to be made to individuals participating in an informal conference within 60 days following the conference. If there is reasonable justification for more appropriate time periods, that would be fine, but some deadlines should apply!

The second request relates to the Surface Effects Area designation given by the coal

The second request relates to the Surface Effects Area designation given by the coal company. In our case, properties were included which they have no, nor ever will have surface rights to. Yet in the application, they indicated our properties were in pending litigation and surface rights were pending. The ramifications of being within the surface effects area have slowly become apparent as time has progressed. First, most people assume we have sold or are going to sell to the company. Second, we have been told by the DNR that the coal company did not have to notify us by letter about the proposed coal mine because we were WITHIN the Surface Effects Area rather than adjoining it. Thirdly, by designating as much Surface Effects Area as possible now, the company is not required to provide proper notification later if they ever expanded the true current surface operations. To illustrate, the company in question designated 623 acres as surface effects area in their application. They only have surface rights to 360 acres. We were told by the Division of Reclamation that they could have designated all 6,000 acres within the permit area as Surface Effects Area if they had wanted to, as no current restrictions apply.

We do not feel this is the intent of Public Law 95-87 as section 507(b)(8) clearly requires the phases of operation and the number of acres to be affected to be presented and 507(b)(9) discusses the requirement to demonstrate the rights which exist for the surface acres to be affected.

As property owners who will be greatly impacted by approval of this permit, we should have been excluded from the Surface Effects Area so that a notification letter would have to be sent, and so that any future expansion of the company's operation onto adjoining properties not currently owned would require a modification process allowing for a comment period by affected residents. Instead, the company has tried to exclude the closest residents from being notified by mail and to obtain upfront approval for all potential future Surface

Effects Areas without demonstrating how or when this land will be used.

It is for this reason that we request that for an area to be designated as Surface Effects Area for an underground coal mine, the company must demonstrate they have the rights, or an option for the rights to the surface land. Also, they should have to present the proposed uses within the 5 year permit term for these surface acres even if owned. Certainly, acreage whereby the owner still has all rights, should never be included as surface effects area. Only if your own property had been so designated could you understand how important this issue is to the citizens so affected in this permit or others.

We ask for your prompt attention to the above request even though we realize that any action taken will probably be too late to help us with the lack of consideration which we are experiencing. However, maybe your actions on these matters will avoid this from occurring to other citizens who deserve to receive a prompt decision after an informal conference and who may be purposely misrepresented as being within a Surface Effects Area, thus relinquishing rights to be notified of future activities as well as the permit itself. Thank you in advance for your consideration of these requests. Despite the requirement to respond within 90 days, due to the lack of technical aspects of this request, we ask that a response be made as quickly as reasonably possible.

Sincerely,

Jim B. Wyant.

[FR Doc. 92-27199 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD9 92-28]

Special Anchorage Area; Portage Lake, Keweenaw Waterway

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special anchorage area in Portage Lake, Keweenaw Waterway, Michigan. These regulations are intended to provide a designated area away from fairways where vessels less than 20 meters in length may anchor without lights at night and during periods of reduced visibility. There are no other anchorages of this type in the Keweenaw Waterway.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Comments and supporting materials should be mailed or delivered to Chief, Aids to Navigation Branch, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060. Please

reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Scott Smith, Aids to Navigation Branch, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3994.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments which may consist of data, views, arguments, or proposals for amendments to the proposed regulations. The Coast Guard does not currently plan to have a public hearing. However, consideration will be given to holding a public hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written form. If it appears that a public hearing would substantially contribute to this rulemaking, the Coast Guard will announce such a hearing by a later notice in the *Federal Register*. The Coast Guard will consider all comments received before the closing date indicated above, and may amend or revoke this proposal in response to such comments.

Drafting Information

The drafters of these regulations are Lieutenant (Junior Grade) Scott Smith, Aids to Navigation Branch, U.S. Coast Guard, project officer, Ninth Coast Guard District Aids to Navigation Branch, and Commander M. Eric Reeves, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

A "special anchorage area" is an area on the water in which vessels less than 20 meters (approximately 65 feet, 7.4 inches) in length are allowed to anchor without displaying the navigation lights which are otherwise required for anchored vessels under Rule 30 of the Inland Navigational Rules, codified at 33 U.S.C. 2030. The purpose of a special anchorage area is to promote safety by providing a place where small vessels can safely moor during night and restricted visibility without maintaining navigation lights and by putting other vessels on notice that such an area should be entered with caution during

night and restricted visibility. Consistent with the primary purpose of promoting safety, special anchorage areas should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. A special anchorage area is open to the general public.

However, use of the area may be regulated by State or local officials. Establishment of this anchorage area has been requested by the Onigaming Yacht Club of Houghton, Michigan. Pilgrim Point, Inc., which owns about 1,900 feet of the adjacent shoreline, has indicated that it has no objection to the proposed anchorage area. The proposed area, specified in detail in the proposed regulation, is an area approximately 2200 feet in length along the shoreline south of Pilgrim Point, where the shoreline forms a natural cove, between the shoreline and the 24-foot contour line. Pilgrim Point is on the north end of Portage Lake, near the middle of the Keweenaw Waterway, which runs through the Keweenaw Peninsula in the Upper Peninsula of the State of Michigan. Pilgrim Point is marked by a fixed light offshore from the point. Pilgrim Point Light should provide a reference point enabling vessels transiting the waterway and the lake to stay well clear of the proposed anchorage area.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These regulations do not impose any new regulatory requirements in an area not heretofore regulated by the Federal Government, and do not impose any requirements or restrictions on State or local authorities.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). The impact of these regulations is

expected to be minimal, and the Coast Guard therefore certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Collection of Information

These regulations will require no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 110

Anchorage grounds, Navigation (water).

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In subpart A, a new § 110.80c is added to read as follows:

§ 110.80c Portage Lake, Mich.

Pilgrim Point, North End of Portage Lake, Keweenaw Waterway, Upper Peninsula, Michigan. The water enclosed by the shoreline south of Pilgrim Point and straight lines drawn between the following points, beginning with the northwest point and ending with the southwest point:

(a) A northwest point which is the point on the shoreline nearest to latitude 47°06'14" N. and longitude 88°30'38" W.,

(b) Thence to a northeast point at latitude 47°06'10" N. and longitude 88°30'29" W.,

(c) Thence to a southeast point at latitude 47°05'52" N. and longitude 88°30'42" W., and

(d) Thence to a southwest point which is the point on the shoreline nearest to latitude 47°05'52" N. and longitude 88°30'48" W.

Note: The area so described above is approximately 2200 feet in length along the shoreline south of Pilgrim Point, where the shoreline forms a natural cove, between the shoreline and the 24-foot contour line. Use of this special anchorage area may be controlled by a local harbormaster.

Dated: October 22, 1992.

G. A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-27395 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-92-91]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Town of Lantana, the Coast Guard proposes to change the regulations governing the operation of the Lantana Avenue Drawbridge, at mile 1031, Lantana, Palm Beach County, Florida, by permitting the number of openings to be limited during certain periods.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. For information concerning comments the telephone number is 305-536-4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7-92-91] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walter Paskowsky at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and

place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and Lt. J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal, except that from December 1, to April 30, on Saturdays, Sundays, and Federal holidays from 10 a.m. to 6 p.m., the bridge opens only on the hour, quarter-hour, half-hour, and three quarter-hour for the passage of vessels. The Town of Lantana has requested that the existing schedule be changed to a 20 minute interval. The owner of the bridge, Palm Beach County, favors the extension of the existing schedule to weekdays during the winter tourist season. Both proposals would reduce the impact on vehicular traffic caused by closely spaced bridge openings. Holding areas near the bridge are considered adequate to accommodate the accumulation of vessels awaiting the scheduled 15 minute openings.

Discussion of Proposed Amendment

A Coast Guard analysis of highway traffic levels, bridge openings and navigational conditions at the bridge site indicates the bridge averages two openings per hour during the winter tourist season. The existing weekend regulations which have been in effect since 1983 have not caused any problems or generated any complaints from boaters. Extending the existing schedule to the weekdays would eliminate back-to-back openings which impact vehicular traffic and should not adversely effect vessel movement through the area. The proposed rule would also correct the name of the bridge from Lantana Avenue to Ocean Avenue Bridge.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the proposed rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will

have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule exempts tugs with tows, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261 is amended by revising paragraph (x) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

(x) Ocean Avenue bridge, mile 1031.0 at Lantana. The draw shall open on signal; except that, from December 1 to April 30, from 7 a.m. to 6 p.m. Monday through Friday, and from 10 a.m. to 6

p.m. Saturdays, Sundays and federal holidays, the bridge need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

Dated: October 22, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 92-27393 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-92-28]

Drawbridge Operation Regulations; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the existing S649 swing span bridge over Lafourche Bayou, mile 66.1 (planned to be replaced), and the planned S649 replacement swing span bridge over Lafourche Bayou, mile 66.6, near Thibodaux, Lafourche Parish, Louisiana, by requiring at least 48 hours advance notice for an opening of the draws. The present regulation for the existing bridge requires at least six hours advance notice for an opening of the draw. The planned replacement bridge is now in the design stage. This action should provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any

recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the existing bridge at mile 66.1 is 7.7 feet above mean high water and 11.9 feet above mean low water in the closed to navigation position. Vertical clearance of the new S649 bridge at mile 66.6 in the closed to navigation position will be 4.4 feet above mean high water and 8.6 feet above mean low water. Navigation through the bridge sites is infrequent. Data provided by LDOTD show that during the years 1987 through 1991 the bridge opened only about 6 times annually for the passage of vessels.

The new bridge will be unmanned and operating equipment must be brought to the bridge site for an opening of the draw. Because of this, and because there are so few vessel passages, the Coast Guard feels that 48 hours notice for an opening is both reasonable and practical. If navigation increases on the waterway in the future to warrant installation of operating equipment on the bridge for more frequent openings, and a shorter or no notice period, the Coast Guard will issue new regulations for the bridge to accommodate the increase in vessel traffic. Announcement of this 48-hour special regulation proposal for the proposed bridge was initially advertised by the Eighth Coast Guard District Public Notice No. CGD8-15-90 issued on October 2, 1990, which advised the public of the proposed bridge replacement project.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated period there will be very little inconvenience to vessels using the waterway. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule making has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Evaluations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.465 is amended by revising paragraph (c) as follows, by redesignating existing paragraph (d) as paragraph (e), and by adding new paragraph (d) as follows:

§ 117.465 Lafourche Bayou

(c) The draws of the S3199 bridge, mile 58.2, and the Lafourche Parish bridge, mile 58.7, both at Raceland, shall open on signal if at least six hours notice is given.

(d) The draws of the S649 bridge, mile 66.1, and the new S649 bridge, mile 66.6, shall open on signal if at least forty-eight hours notice is given.

Dated: October 6, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.

[FR Doc. 92-27394 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-300261; FRL-4079-5]

RIN 2070-AC18

Dinoseb; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.281 for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of dinoseb have been canceled.

DATES: Written comments, identified by the document control number [OPP-300261], must be received on or before January 11, 1993.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Melissa L. Chun, Registration Support Branch, Registration Division

(H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6354.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on food or animal feed commodities.

Tolerances for residues of dinoseb are listed in 40 CFR 180.281 for the following raw agricultural commodities: alfalfa, alfalfa hay, almonds, almond hulls, apples, apricots, barley forage, barley grain, barley straw, beans, bean forage, bean hay, birdsfoot trefoil, birdsfoot trefoil hay, blackberries, blueberries, boysenberries, cherries, citrus, clover, clover hay, corn fodder, corn forage, fresh corn (including sweet corn and corn kernels plus cob with the husk removed (K + CWHR)), corn grain (including popcorn), cotton forage, cottonseed, cottonseed hulls, cucurbits, currants, dates, figs, filberts, garlic, gooseberries, grapes, hops, lentils, loganberries, nectarines, oat forage, oat grain, oat straw, olives, onions, peaches, peanuts, peanut forage, peanut hay, peanut hulls, pears, peas, pea forage, pea hay, pecans, plums (prunes), potatoes, raspberries, rye forage, rye grain, rye straw, soybeans, soybean forage, soybean hay, strawberries, vetch, vetch hay, walnuts, wheat forage, wheat grain, wheat straw, pasture grass, and pasture grass hay.

On October 7, 1986, the Administrator issued an emergency suspension for all registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts based on the adverse human health and environmental risks related to the use of such products. The Emergency Suspension Order immediately prohibited all further sale, distribution, and use of dinoseb products. Notice of this action was published in the Federal Register of October 14, 1986 (51 FR 36634). In addition, the Agency issued a Notice of Intent to Cancel and deny all registrations for pesticide products containing dinoseb in the Federal Register (51 FR 36650). In accordance with section 6 of FIFRA, the

cancellations were to become effective 30 days after publication of the Notice unless the registrant or other adversely affected persons requested a hearing to contest the cancellation of specific registrations. Upon the expiration of the 30-day period, many dinoseb registrations were canceled by operation of law. However, in those instances where registrants requested hearings, registrations remained in effect (although still suspended) pending the outcome of the administrative hearing. Subsequent modification of the Final Suspension Order allowed limited use of dinoseb on dried peas, lentils and chickpeas, caneberries (blackberries, boysenberries, loganberries, and raspberries), cucurbits, green peas, and snap beans grown in the States of Idaho, Oregon, and Washington during the 1987 and 1988 use seasons.

By June 9, 1988, the Administrator issued a Final Cancellation Order on dinoseb which canceled all of the remaining registrations. However, the Order permitted the use of existing stocks of all canceled dinoseb products which were labeled for use on peas, lentils, or chickpeas to be sold, distributed, and used for weed control in dry peas, lentils, chickpeas, and green peas in the States of Idaho, Oregon, and Washington during the 1988 use season and on caneberries to be sold, distributed, or used for cane control in these crops in the States of Oregon and Washington for the 1988 and 1989 use seasons.

Based on the fact that dinoseb is no longer domestically registered for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.281 for residues of dinoseb in or on the above-named commodities. These tolerances were obtained in conjunction with the FIFRA registrations.

Since the sale, distribution, and shipment of existing stocks of dinoseb for use on caneberries in Washington and Oregon was prohibited after the 1989 use season, the existing stocks of those remaining products should be depleted. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Surveillance and compliance monitoring data on domestic and imported commodities have shown no detectable residues of dinoseb for the past three years. Further, since dinoseb is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination.

Consequently, no action levels will be recommended to replace these tolerances upon their revocation.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300261]. All written comments filed in response to this document will be available for public inspection in Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed action is not a major regulatory action, i.e., it will not result in an annual effect on the economy of at least \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

The proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Since the sale, distribution, and shipment of existing stocks of dinoseb are prohibited in the U.S. and imports of most of the commodities are small relative to U.S. production, there are no impacts expected on users of imported commodities, and thus no impacts on prices, producers, consumers, competition, and international trade.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.281 [Removed]

2. By removing § 180.281 *Dinoseb; tolerances for residues*.

[FR Doc. 92-27405 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 185

[OPP-300260; FRL-4077-9]

RIN 2070-AC18

Toxaphene; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.138, 180.319, and 185.5750 for residues of the insecticide toxaphene (chlorinated camphene containing 67-69 percent chlorine) in or on various raw agricultural commodities, milk, and crude soybean oil. EPA is initiating this action because all registered uses of toxaphene on food commodities have been canceled, and all existing stocks provisions expired March 1, 1990.

DATES: Written comments, identified by the document control number [OPP-300260], must be received on or before January 11, 1993.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as

"Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 726D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-305-7700).

SUPPLEMENTARY INFORMATION: This document proposes the revocation of all tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and 348, for residues of the insecticide toxaphene in or on food or animal feed commodities, milk, and crude soybean oil. These tolerances are listed in 40 CFR 180.138, 180.319, and 185.5750. On November 29, 1982, EPA issued a Notice of Intent to Cancel or Restrict Registrations and Notice of Denial of Applications for Registration for toxaphene in which the Agency announced its decision to cancel the registrations for most uses and to deny applications for registration of toxaphene based on the determination of risks of: (1) Chronic effects to wildlife with potential applicability to humans; (2) acute toxicity to aquatic organisms; (3) population reduction in nontarget organisms; and (4) increased potential for oncogenicity in humans. Subsequently, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of technical toxaphene and formulated products containing toxaphene were canceled; EPA allowed the sale, distribution, and use of existing stocks until March 1, 1990.

Tolerances for residues of toxaphene are listed in 40 CFR 180.138 in or on the following raw agricultural commodities: apples, apricots, bananas, barley, beans, blackberries, boysenberries, broccoli, brussel sprouts, cabbage, carrots, cauliflower, celery, citrus fruits, collards, corn, cottonseed, cranberries, cucumbers, dewberries, eggplants; fat of meat from cattle, goats, hogs, horses, and sheep; hazelnuts, hickory nuts, horseradish, kale, kohlrabi, lettuce,

loganberries, nectarines, oats, okra, onions, parsnips, peaches, peanuts, pears, peas, pecans, peppers, pimentos, pineapples, quinces, radishes or radish tops, raspberries, rice, rye, rutabagas, sorghum grain, soybeans, spinach, strawberries, sunflower seeds, tomatoes, walnuts, wheat, and youngberries.

Tolerances for residues of toxaphene are listed in 40 CFR 180.319 in or on the following raw agricultural commodities: alfalfa hay and milk. Tolerances for residues of toxaphene in crude soybean oil are listed in 40 CFR 185.5750.

The tolerances under the FFDCA for toxaphene in or on the commodities discussed above as being proposed for revocation were obtained in conjunction with the FIFRA registrations. Based on the fact that toxaphene is no longer domestically registered for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.138, 180.319, and 185.5750 for residues of toxaphene in or on the above-named commodities.

Since all use of toxaphene was prohibited after March 1, 1990, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Although toxaphene is a persistent chemical, monitoring data from the Food and Drug Administration indicate that no action levels are needed.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains toxaphene may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal to revoke the tolerances for toxaphene listed in 40 CFR 180.138 and 180.319 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

EPA has no information to suggest that toxaphene is used on food commodities exported to the United States. Any person who has information to suggest that toxaphene is used on food commodities exported to the United States or other interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300260]. All written comments filed in response to this document will be available for public inspection in the

Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all use of toxaphene on food crops was prohibited after December 31, 1986, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities,

Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 1992.

Victor J. Kimm,

Acting Assistant Administrator for
Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.138 [Removed]

b. By removing § 180.138 *Toxaphene; tolerances for residues*.

§ 180.319 [Amended]

c. In § 180.319 *Interim tolerances* by removing the entry "Toxaphene (chlorinate camphene containing 67-69% chlorine)" from the table therein.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C 348.

§ 185.5750 [Removed]

b. By removing § 185.5750 *Toxaphene*.

[FR Doc. 92-27406 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation: Rules and Regulations

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to undertake rulemaking to revise the current (43 CFR part 426) implementing the Reclamation Reform Act of 1982 (RRA). These rules and regulations would affect Bureau of Reclamation Projects in the seventeen Western States: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Reclamation also intends to

undertake rulemaking on interim regulations applicable only to California's Central Valley Project. The rules and regulations will be prepared in accordance with orders dated July 26, 1991, and March 10, 1992, by the United States District Court for the Eastern District of California.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Lynott, Director, Policy and Programs, Bureau of Reclamation, Denver Office, PO Box 25007, Denver CO 80225.

SUPPLEMENTARY INFORMATION: Final rules and regulations for implementing the Reclamation Reform Act of 1982 (RRA) were published in the *Federal Register* on December 6, 1983. During that rulemaking, the Department of the Interior decided not to include provisions for implementing section 203(b) of the RRA. This section, commonly known as the "hammer clause," mandated that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for Reclamation irrigation water delivered to land leased in a landholding in excess of 160 acres. Final rules and regulations implementing section 203(b) were published in the *Federal Register* on April 13, 1987 (52 FR 11954). Other revisions to the rules and regulations were published in the *Federal Register* on October 26, 1987 (52 FR 39918), December 16, 1988 (53 FR 50530), and September 3, 1991 (56 FR 43553).

On July 26, 1991, the United States District Court for the Eastern District of California ruled that the Bureau of Reclamation had not complied with the requirements of the National Environmental Policy Act in preparing an environmental assessment and a "Finding of No Significant Impact" in the promulgation of its 1987 regulations for the RRA (43 CFR part 426, Rules and Regulations for Projects Governed by Federal Reclamation Law). After the briefing on the issue of relief, on March 10, 1992, the court issued an order declaring that:

1. The issuance of the 1987 Acreage Limitation Rules and Regulations was a major action affecting the quality of the environment, thus requiring the preparation of an environmental impact statement (EIS), and that not preparing an EIS had violated the Administrative Procedure Act;

2. Within 30½ months, Reclamation must issue final rules, including the preparation of an EIS that would apply to all Reclamation projects;

3. Within 15 months, Reclamation must issue interim rules to implement the RRA in the Central Valley Project of California;

4. Reclamation must meet a court ordered schedule of compliance; and
5. The existing rules will remain in effect until new rules are prepared.

On May 12, 1992, two notices of intent were published in the *Federal Register* (57 FR 20288). One notice was to alert the public regarding Reclamation's plans to prepare an EIS on the effects of proposed regulations to implement the RRA in the seventeen Western States. The other notice was to alert the public regarding Reclamation's plans to prepare an EIS on interim regulations to implement the RRA in California's Central Valley Project. On October 2, 1992, the Bureau of Reclamation announced in the *Federal Register* (57 FR 45639) a notice of four scoping meetings held during the week of October 19, 1992, to obtain public input on the issues and alternatives to be addressed in the EIS for California's Central Valley Project.

On October 16, 1992 (57 FR 47437), Reclamation announced its intent to undertake rulemaking to revise 43 CFR 426.10 to increase the acreage threshold below which Reclamation project landholders are exempted from the RRA's requirement that they submit forms declaring their landholdings. Reclamation plans to proceed with both the court-ordered rulemakings and the rulemaking revising the forms exemption threshold, and will determine the relationship between the rulemakings during the NEPA process.

The public will be given the opportunity to participate in determining the scope of issues to be addressed in the westwide EIS at meetings and during a comment period. The public will also be able to comment on the proposed westwide regulations when they are published in the *Federal Register*.

Dated: November 4, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92-27337 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FO Dockets 91-301 and 91-171; FCC 92-439]

Exhibit of Various Emergency Alerting Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: An exhibit will be held at the FCC on December 11, 1992, from 9 a.m. to 3 p.m., to demonstrate a variety of modern emergency alerting systems. Before creating a new generation of EBS equipment, the Commission seeks information from manufacturers who either currently, or in the future, have the capacity to develop emergency alerting system that can interface with varied technologies such as broadcasting and cable.

DATES: December 11, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., room 856, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helena Mitchell, Chief, Emergency Broadcast System, (202) 632-3906.

SUPPLEMENTARY INFORMATION: An exhibition will be held at the FCC on December 11, 1992, from 9 a.m. to 3 p.m., in room 856, 1919 M St. NW., Washington, DC, to demonstrate a variety of modern emergency alerting systems.

Equipment manufacturers are invited to demonstrate their alerting equipment or prototypes. The morning program will include presentations and discussions on several alerting systems. The afternoon will be set aside for closer examination of the equipment.

This exhibit is part of the Commission's efforts to obtain information that will be pertinent in a pending rule making. On October 8, 1992, the Commission released Notice of Proposed Rule Making/Further Notice of Proposed Rule Making, FO Dockets 91-301 and 91-171, FCC 92-439. The proposed rule making addressed improving the operational aspects of the Emergency Broadcast System (EBS) and suggestions for the modernization of the EBS equipment.

Before creating a new generation of EBS equipment, the Commission seeks information from manufacturers who either currently, or in the future, have the capacity to develop emergency alerting systems that can interface with varied technologies such as broadcasting and cable.

Manufacturers that demonstrate or exhibit equipment are advised that pursuant to Commission Rule § 1.206, 47 CFR 1.206, they are required to file *ex parte* statements for the record detailing the equipment demonstrated or exhibited. Manufacturers who are interested in participating in the event, should contact the EBS staff at (202) 632-3906 prior to November 20, 1992.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-26983 Filed 11-10-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 74

[MM Docket No. 87-268, FCC 92-438]

Broadcast Services; Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule is one segment of the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making (Third Report/Third Notice). The final rules adopted in this decision may be found elsewhere in this issue. This Third Report/Third Notice seeks comment on several questions relating to the implementation of advanced television (ATV) service in this country. Comment is invited on issues such as relief from the application and construction deadlines for noncommercial stations, a renewal challenger's authority to file a supplemental application for the ATV channel (contingent on grant of the challenger's NTSC application), ATV call signs, a possible requirement that manufacturers produce receivers capable of both NTSC and ATV reception, future technologically advanced uses of the conversion channel, and the use of ATV channels for ancillary purposes. We open these questions for comment to establish procedures that will result in a smooth, successful transmission to ATV.

DATES: Comments are due by December 21, 1992, and reply comments are due by January 29, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division (202) 632-7792; Gordon Godfrey, Mass Media Bureau, Policy and Rules Division (202) 632-9660; or Alan Stillwell, Office of Engineering and Technology (202) 653-8162.

SUPPLEMENTARY INFORMATION: This is a synopsis of the proposed rules segment of Commission's Third Report/Third Notice in MM Docket No. 87-268, FCC 92-438, adopted September 17, 1992, released October 16, 1992. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference

Center, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1990 M Street, NW., room 640, Washington, DC 20554.

Synopsis of the Third Further Notice of Proposed Rule Making

1. The Commission, as part of its Third Report/Third Notice, seeks additional comment on a number of issues relating to the implementation of ATV. The Commission earlier sought comment (See Second Report and Order/Further Notice of Proposed Rule Making, 57 FR 21744, 21755, May 22, 1992) on several proposals. The Commission makes certain preliminary decisions and takes certain actions based on comments and on petitions for reconsideration received in response to the Second Report and Order/Further Notice. A discussion of these decisions and actions may be found elsewhere in this issue.

2. The Commission, in response to a petition for partial reconsideration/clarification filed by National Capital Communications, Inc. (NCCI), first proposes to permit a party challenging the renewal of an NTSC license (NTSC, after the National Television System Committee, is the existing broadcasting system) to file a supplemental application for the ATV channel, contingent upon the grant of the challenger's NTSC application. In that regard, the Commission also proposes that the contingent ATV application should not be subject to a second comparative hearing. As stated previously, the Commission does not intend to issue authorizations for new NTSC channels after initial assignments are made. However, the Commission does propose to issue new NTSC authorizations for a party successfully challenging the renewal of an incumbent NTSC broadcaster, and succeeding to substantially the same broadcast facility. A new NTSC station would also be authorized to replace an existing authorization where an incumbent's NTSC license had been revoked. These proposals would apply to renewal challenges filed prior to construction and operation of an ATV facility, where an ATV channel has been awarded or where an ATV application is pending during the period before ATV assignments are made.

3. The Commission believes that permitting a successful NTSC renewal challenger also to receive the paired ATV channel, by enabling the ATV and NTSC channel pairs to remain together, would further two previously identified

public goals: (1) preserving existing NTSC service to the public during the transition to ATV, and (2) requiring simulcasting at the earliest appropriate date. Parties are invited to submit comment on these tentative findings and proposals, and to address the effect they might have on the proposed ATV allotment/assignment plan (See the Second Further Notice of Proposed Rule Making at 57 FR 36652, August 26, 1992), which is thus far predicated on existing sites held by existing broadcasters. Comment is also sought on the criteria which should be part of any contingent ATV application. Finally, the Commission invites comment on whether these same policies should apply to renewal challenges filed after an NTSC licensee has been awarded an ATV license and its facility is operation,—i.e., where both channels of an ATV/NTSC pair are on the air.

4. The Commission next seeks comment on what measures might be appropriate to alleviate the burden placed on noncommercial stations by the application/construction deadlines, given these stations' unique dependency on Federal and local funding and private contributions. The Commission suggests a number of possible remedies, ranging from a special application period to relaxed financial requirements. The latter means would eliminate the pressure which noncommercial may face in obtaining funding within the application period, but if a noncommercial station ultimately fails to obtain the funding necessary to construct, its ATV channel would remain unused and unavailable to other qualified noncommercial applicants until the construction period expires.

5. Another possible method of assisting noncommercial stations in obtaining funding within the application/construction periods might be for the Commission to intensify coordination with funding agencies such as the National Telecommunications and Information Administration (NTIA). This might enable the Commission to stagger noncommercial application deadlines so as to harmonize them with available funding, but the feasibility of establishing such coordination with all possible funding sources is questionable. Such an approach would also add to the administrative burden of implementing ATV. The Commission seeks comment on the advisability of the above alternatives, and on any others that interested parties may propose.

6. The Commission further solicits comment on a proposal to assign to the ATV channel, at the time an ATV

construction permit is awarded to an existing broadcaster, the same call sign as the NTSC channel currently in use, with the addition of an appropriate two-letter suffix.

7. The Commission next solicits comment on whether future advances in technology that are compatible with any ATV standard selected should be permitted on the conversion channel. (The conversion channel refers to the additional 6 MHz channel which broadcaster will be permitted to use for an interim period to effectuate the transition to ATV.) As indicated previously in this proceeding, one of the Commission's goals is to ensure that the ATV technical standard is sufficiently flexible to allow it to incorporate future advances in technology. Such advances could include improvements in ATV audio and video techniques, and could be in the broadcaster's and in the public's best interest. Therefore, the Commission intends to consider authorization of other advanced video applications, including future techniques that might provide for transmission of more than one ATV program service on a single conversion channel, so long as they are compatible with the ATV system selected. The Commission requests comment on the possible operation of such advanced technologies on the ATV conversion channels.

8. Some parties propose that we authorize broadcasters to use their ATV channels for ancillary purposes, analogous to ancillary uses of NTSC such as the use of the vertical blanking interval, subsidiary communication authorizations, and the second audio programming. Under such proposals, excess data capacity would be used in two ways. It might be used during times when the ATV channel was otherwise non-operational, such as overnight, or it might be used on a non-interfering basis during ATV transmission. Such ancillary uses if technically possible, might be critical to successful implementation of ATV in its early stages, when receiver penetration is low, and would be compatible with previous Commission policy allowing ancillary uses of this nature to help spur development of a new technology. On the other hand, such ancillary uses should not be allowed to predominate over the primary use of the channel. Accordingly, the Commission requests comment on the technical feasibility and policy implications of permitting such ancillary uses. Should such ancillary uses be allowed during non-operation time, the Commission also seeks comment on whether to require some minimum operating schedule for ATV, as is

currently imposed on NTSC operators by § 73.1740(a)(2).

9. Finally, the Commission solicits comment on whether there is any necessity to exercise its authority under the All Channel Receiver Act (47 U.S.C. 303 (s)) to require that manufacturers produce receivers capable of both NTSC and ATV reception during the period prior to full conversion to ATV. In particular, the Commission encourages comment on the effect, if any, such a requirement would have on the cost of receivers to consumers.

Procedural Matters

Comment Information

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 21, 1992, and reply comments on or before January 29, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Statement and Information

I. Reason for Action

11. This action is taken to invite further comment on outstanding questions affecting implementation of advanced television (ATV) service in this country.

II. Objectives of the Action

12. The Commission seeks further comment on the issues surrounding the introduction of ATV service in order to establish a comprehensive, reliable record on which to base decisions in this area. The record established by this proceeding will ensure that our rules lead to the harmonious and efficient implementation of ATV in the United States.

III. Legal Basis

13. Authority for this action may be found in 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements

14. No reporting, recordkeeping, or compliance requirements are specifically proposed in this notice.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

15. This notice proposes no rules which would overlap, duplicate or conflict with other federal rules.

VI. Description, Potential Impact and Number of Small Entities Involved

16. Approximately 1,500 licensed commercial and educational UHF and VHF television stations, approximately 4,918 licensed UHF and VHF translator stations and approximately 1,284 licensed UHF and VHF low-power television stations could be affected by the actions ultimately taken in this proceeding. Professional and consumer equipment manufacturers also will be impacted by our decisions.

17. This notice makes proposals that potentially could affect small entities. We invite comment on several proposals involving the disposition of the corresponding ATV paired channel in instances of a successful renewal challenge for an NTSC channel. We tentatively decide that a renewal challenger should be permitted to file a supplemental application for the ATV channel, which would be contingent upon grant of the challenger's NTSC application. The contingent ATV application would not be subject to a second comparative hearing.

18. Noncommercial television operators would be positively affected by our proposals to account for their special difficulties in obtaining funding within the application/construction period we establish. We also invite comment on other methods of relief. Noncommercial television operators likewise stand to benefit from our decision to extend the application/construction period from five years to six and to permit those who apply early a correspondingly longer time (within the six-year overall period) to construct.

19. We solicit comment on whether it would be necessary to exercise our authority under the All Channel Receiver Act to require manufacturers to produce receivers capable of both NTSC and ATV reception during the period prior to full conversion to ATV.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

20. In offering proposals for public comment in all facets of this proceeding, we have tried to select alternatives that would cause the least disruption to the least number of parties. This concern is reflected in the proposals adopted and discussed in the Final Regulatory Flexibility Act Statement in appendix C. For example, we acknowledge that initial ATV application priority for existing noncommercial television broadcasters could be jeopardized by their inability to meet the application/construction deadline due to delays caused by their reliance on

governmental funding and private donations. In this notice, we suggest the following means of compensating for this disadvantage: Establishing a special application period for noncommercial licensees; relaxing the financial requirements noncommercial stations must meet during the application period; and intensifying our coordination with funding agencies such as the National Telecommunications and Information Administration. We solicit comment on these and other responses to noncommercial television's unique circumstances.

21. In order to permit affected entities to take advantage of compatible technological innovations, we invite comment on the types of advanced compatible uses that might be permitted on the ATV channel.

22. Finally, we seek comment on whether to allow broadcasters the flexibility to generate additional revenue on their ATV channels, which would help finance the investment and operation of their ATV channels, by using these channels for ancillary purposes, analogous to ancillary uses of NTSC.

23. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

24. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

Ex Parte Consideration

25. This is a non-restricted proceeding. See § 1.1202 *et seq.* of the Commission's Rules, 47 CFR 1.202 *et seq.* for rules governing permissible ex parte contacts.

26. Accordingly, it is ordered that pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, this Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making is adopted.

List of Subjects in 47 CFR Parts 73 and 74

Television broadcasting.
Federal Communications Commission.
Donna R. Searcy,

Secretary.

[FR Doc. 92-27348 Filed 11-10-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1816

Changes to NASA FAR Supplement Coverage on Cost-Plus-Award-Fee Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. The proposed modifications increase emphasis on cost-plus-incentive-fee contracts, base award fee on the product delivered (instead of performance in a particular period), establish requirements for performance incentives, eliminate use of base fees, and improve the rating process.

DATES: Comments must be received on or before December 14, 1992.

ADDRESSES: Submit comments to the Assistant Administrator for Procurement, NASA, Code HC, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Luedtke, Director, Contract Pricing and Finance Division (Code HC), Telephone: (202) 358-0003.

SUPPLEMENTARY INFORMATION:

Background

NASA began a cost-plus-award fee (CPAF) initiative in August 1991. The goal was to seek ways to improve the CPAF process at NASA. This proposed coverage will implement the improvements generated by the initiative.

Impact

The Director, Office of Management and Budget (OMB), by memorandum, dated December 14, 1989, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certifies that this

regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it applies to a very limited number of contracts, which are generally not used with small entities; in fact, the policy will reduce even further the possibility that CPAF contracts will be used with small entities. This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1816

Government procurement.

Don G. Bush,

Assistant Administrator for Procurement.

Accordingly, the National Aeronautics and Space Administration proposes to amend 48 CFR part 1816 as follows:

1. The authority citation for 48 CFR part 1816 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1816—TYPES OF CONTRACTS

§ 1816.404-2 [Amended]

2. Section 1816.404-2 is revised to read as follows:

§ 1816.404-2 Cost-plus-award-fee contracts.

(a) *General.* In the appropriate circumstances, cost-plus-award-fee (CPAF) contracts are a useful means of procuring goods and services to meet NASA's requirements. This coverage provides for more objective rating of cost control and performance incentives than are found in traditional CPAF contracts, as well as overall guidance on using CPAF contracts at NASA. The goal is to control costs, increase performance, and improve CPAF contracting at NASA in general.

(b) *Use.* When use of an incentive contract is contemplated, a cost plus incentive fee should always be one of the options considered. Even where cost-plus-award-fee appears to be the most appropriate form of contract, the contracting officer shall consider whether cost-plus-incentive-fee features can be effectively incorporated into the contract. Award fee contracts may only be used on contracts where the total estimated cost and fee exceed \$5 million. The procurement officer may waive this requirement, but normally should only do so for contracts having, for example, direct health and/or safety impacts. Use of a cost-plus-award-fee contract must be approved, on a case by case basis, by the procurement officer. In cases of follow-on procurements where a cost-plus-award-fee contract was used on the prior contract and is planned for use on the following-on

effort, such use must be approved by the Center Director.

(c) *Structure.* Award fee contracts at NASA fall into three broad categories: Support, study/design and hardware. The categories are described below:

(1) *Support:* In this category, the service is what is provided every day. Performance in any period is essentially independent of that provided in any other period.

(2) *Study/Design:* In this category, the contractor's effort is cumulative across evaluation periods and leads to a final product which is delivered to the Government at the end of the effort.

(3) *Hardware:* In this category, the contractor is producing a product which is delivered to NASA, and which will then be used for some people by NASA.

(d) Judgment needs to be applied in determining the category of a proposed contract (see the NASA Award Fee Handbook, XXXX 199X for additional detail)

(e) NASA's policy is that there will be no base fee on any award fee contract.

(f) Award fee is earned based on the quality, cost, and timeliness of the goods or services delivered to the Government.

(1) For contracts in the support category, that fee is earned each evaluation period for the work done in that evaluation period. The evaluation given for that period is final; no unearned fee is available for future periods and no rating can result in a reduction of fee paid for a prior period.

(2) For contracts in the study/design and hardware categories, the fee is earned for the contract deliverables, not interim progress. While interim ratings are given at the standard 6-month evaluation period, and interim fee payments may be made based on them, the final rating determines the final award fee after the good or service is completely delivered. The rating is thus reflective of the entire contract effort rather than that of any intermediate period or periods. Since the interim ratings do not determine the final payment, no fee is "lost" or "gained" during the contract.

(g) (1) Cost control will be emphasized in all award fee contracts and be measured against the estimated cost of the contract, not the program budget. The estimated cost of the contract includes changes authorized by the contracting officer but which have not been priced. Changes in costs beyond the contractor's control (e.g., weather-related launch delays) which do not entitle it to an equitable adjustment may be considered in evaluating contractor cost control. Where explicit weightings are used, cost shall be no less than 25 percent. The cost control evaluation of

the award fee shall be structured according to the opportunities for cost savings in a particular contract.

(2) Taking into account the cost risk and the contractor's control over costs, a cost evaluation arrangement shall be established. The arrangement may take a variety of forms, as long as the predominant element is an objective measurement of the costs incurred on the contract versus the estimated cost of the contract. For example, one approach is to use a formula which reflects a higher score based on more dollars saved, and which decreases as the costs incurred increase. The formula could reflect a constant "point per dollars" or an increasing "point per dollars"—the latter would recognize that it is more difficult to save the hundredth dollar than the first. If necessary, adjustments could then be made for the types of costs described in paragraph (g)(1) of this section (costs outside the contractor's control).

(3) The award fee plan and the contract shall specify that in order to be rewarded for above average cost control, the other (technical and schedule) scores combined must average at least 80. The plan shall provide some lesser recognition for cost control when the contractor meets the cost control objectives (equalling the estimated cost of the contract does not result in zero points or no fee recognition for cost control).

(h) (1) On CPAF hardware contracts with an estimated value in excess of \$25 million, a performance incentive will be included in the contract. Exceptions to this policy must be authorized in advance by the Center Director. A performance incentive may be used in contracts of lesser value when the procurement officer determines that it is appropriate.

(2) Performance must be clearly defined, and incentives tailored for each individual procurement. For example, in situations where an item is being built for the first time, the performance incentive may be based on the following model. A "standard" would be established which reflects the expected performance of the item being acquired under the contract. That point would have \$0 performance incentive associated with it. Both a positive and a negative performance incentive would be established, which reflect performance greater or lesser than the standard. The maximum negative incentive would equal the total potential award fee. That maximum negative incentive would be assessed for complete failure of the item when initially placed in use. The maximum

positive incentive, when added to the total potential award fee, may not exceed the limitations stated in FAR 15.903(d). To ensure that the award fee and positive performance incentive are both effective in motivating the contractor, the total potential award fee and the maximum positive performance incentive must each be at least one-third of the combined total of the two. This means the maximum negative performance incentive cannot be greater than 10 percent: ($\frac{1}{3}$ of the maximum possible fee (15 percent) is 10 percent).

(3) In other cases, where the item(s) may have been produced before, and the achievable level of performance is fairly predictable, meeting the cost, schedule, and performance goals in the contract would earn the total award and performance incentives. At the time of delivery, the award fee rating would be given. If "best schedule," aggressive cost control (and any other factors set out in the award fee) are attained, the contractor would be given a score of 100 and the entire potential award fee would be paid. If the objectives were not attained, a score (and consequently a fee) of less than 100 would be awarded. If the score was 60 or less, no award fee would be paid. No interim award fee ratings would be made; interim fee payments may be negotiated.

(4) Likewise, for the performance incentive, clear standards would be set. If those standards were met, the contractor would be paid all of the performance incentive. If the performance were less than the standard, but still of some value (down to a minimum acceptable level), then a portion of the performance incentive would not be paid. Performance below the minimum acceptable level would result in none of the performance incentive being paid, and if the performance were poor enough, contractor payment to the Government. The maximum payment the contractor would be liable for would equal the total potential award fee.

(5) The distinction between this model and that set out in paragraph (h)(2) of this section is based on the level of certainty as to what can be achieved. In paragraph (h)(2), the standard reflects the estimate of the parties as to what can reasonably be achieved. However, if greater performance can be obtained, it is valuable to the Government and will be rewarded. In paragraph (h)(3), the achievable level of performance is more certain (usually because it has already been achieved with a prior item). That level of performance is what is needed, and additional performance beyond that level is not worth any additional time or

money to the Government to achieve. The award fee would reflect an aggressive (and possible) level of cost, a "best schedule" goal (which is either the earliest practical date (when early delivery is of value to the Government) or the required date (when early delivery is of no or negative value—such as a planetary probe that can only be launched at certain times)). Any other factors in the award fee similarly reflect high standards. The performance incentive is set at what is needed; all performance incentive is paid for meeting that—"extra performance" is not valuable to the Government and is not rewarded. The underlying assumption in paragraph (f)(3) is that the award fee/performance incentive reflects definite high (but still achievable) standards (versus the best estimates-type standards reflected in paragraph (f)(2)).

(6) Other approaches to performance incentives may also be used if they are clearly structured to effectively motivate contractors to achieve excellence in technical/performance, schedule and cost control areas.

(7) Where there are several discrete, major items (e.g., many satellites bought under one contract), a separate award fee and performance incentive should be established for each item. If there are several elements that combine to produce the total performance (e.g., several discrete instruments on a satellite which operate and can produce data independently), then separate performance incentives may be established for each—to account for the possibility that useful performance on some may last longer than on others.

(8) The standard, the performance measurement techniques, the units of measurement, the method of calculation, and the amount of fee associated with each unit (both on the positive and negative incentives) shall be established at contract award. Likewise, incentives for separate items, and/or separate elements for one item, must be established at that time.

(i) *Evaluation/Administration.* Award fee evaluation periods shall be at least 6 months in length. Procurement officers may authorize shorter evaluation periods; however, given the administrative costs, this should be the exception, not the rule.

(j) A scoring system of 0–100 will be used for all award fee ratings. Award fee will only be paid when the score is 61 or above. The score will be applied to the potential award fee pool to determine the percentage of award fee earned (e.g., a score of 85 will yield an

award fee equal to 85 percent of the potential fee).

(k) Standard adjectival ratings will be utilized on all award fee contracts. The adjectives, their associated numerical scores, and descriptions are as follows:

Excellent (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

As a benchmark for evaluation, in order to be rated Excellent, the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

Very Good (90–81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

Good (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

Satisfactory (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

Poor/Unsatisfactory (60 and below): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(1) All fee plans/performance criteria/areas of emphasis will be reviewed by the NASA contracting officer prior to the beginning of a new evaluation period. Any changes will be discussed with the contractor before being made, and communicated to the contractor in writing, prior to the start of that new period.

(m) Interim fee payments shall only be based on the award fee (not the performance incentive) and may be negotiated on a case by case basis. However, no more than 80 percent of the fee (based on the interim ratings) may be paid on an interim basis.

(n) The final award fee evaluation will occur after the final delivery under the contract. For other than support category contracts, the resulting final score will be applied to the total potential award fee pool of the contract and the final award fee amount determined. Taking into account any interim fee payments, the remaining fee shall be paid to (or any excess fee recovered from) the contractor at that time.

(o) On an award fee contract with performance incentives, the calculation of positive or negative incentive shall be done when performance (as defined in the contract) ceases, or when the maximum positive incentive is reached. When the performance is below the standard established in the contract, the Government shall calculate the amount due and bill the contractor. Once performance exceeds the standard, the contractor may request payment for all incentives earned in a particular period when that period is complete (payment schedules may be negotiated, but shall not be more frequent than monthly). In such a case, when performance ceases, or the maximum incentive is reached, the Government shall calculate the performance incentive earned and unpaid and promptly remit it to the contractor.

[FR Doc. 92-27423 Filed 11-10-92; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC-5; Notice No. 4]

RIN 2130-AA70

Timely Response to Grade Crossing Signal System Malfunctions; Maintenance, Inspection, and Testing; Open Meeting and Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of open meeting and extension of comment period.

SUMMARY: FRA announces an open meeting to consider issues regarding the proper functioning of active warning devices at highway-rail grade crossings. Those issues will include standards for safe maintenance, inspection and testing of active warning devices and timely response to malfunction of such devices. This meeting is necessitated by recently enacted legislation. The open meeting

will be held on December 11, 1992, in Washington, DC. FRA is also extending the Notice of Proposed Rulemaking (NPRM) comment period on timely response to grade crossing signal malfunctions from December 1, 1992 to January 15, 1993 in order to accommodate then open meeting and comments that may arise in response to issues raised at that meeting.

DATES: The open meeting will be held on December 11, 1992, at 10 a.m. Written comments must be received no later than January 15, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) The open meeting will be held in room 10234, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments and registration for the open meeting should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Telephone registration may be made by contacting the Docket Clerk at 202-366-2257.

Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card on the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: William E. Goodman, Chief, Signal and Train Control Division, Office of Safety Enforcement, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0495), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION: On June 29, 1992, FRA published a NPRM regarding timely response to grade

crossing signal system malfunctions. 57 FR 28819. A public hearing was held on September 15, 1992. In a notice issued subsequent to the hearing, FRA extended the period for public comment until December 1, 1992.

Section 202(q) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(q)) as amended by the Rail Safety Enforcement and Review Act (Pub. L. 102-365; Sept. 3, 1992) requires that DOT "issue rules, regulations, orders, and standards to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings." In light of this clear Congressional mandate, and in an effort to receive information and views from interested members of the public in as expeditious a manner as possible, FRA is including the subject of federal maintenance, inspection, and testing standards within the scope of the open meeting. Accordingly, FRA encourages any interested party to attend and participate in an open discussion concerning federal grade crossing maintenance, inspection, and testing standards together with discussions concerning timely responses to signal system malfunctions.

Please note that any person wishing to participate in the open meeting must register with the Docket Clerk at the address and telephone number provided above at least 5 working days prior to the date of the meeting. Persons not registering in advance will be free to observe the meeting but will not be permitted to participate in the discussion.

In order to provide an opportunity for further public comment before, and subsequent to the open meeting, FRA is extending the comment period in this docket through January 15, 1993.

Issued in Washington, DC, on November 5, 1992.

S. Mark Lindsey,
Chief Counsel.

[FR Doc. 92-27379 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-06-M

Notices

Federal Register

Vol. 57, No. 219

Thursday, November 12, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.

Date: December 15-16, 1992.

Time: 8 a.m.-5 p.m. December 15, 1992. 8:30 a.m.-5 p.m. December 16, 1992.

Place: USDA, Administration Bldg, room 104A (Williamsburg Room), 14th & Jefferson Drive, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advance the development of the National Genetic Resources Program.

Contact Person: Henry L. Shands, Associate Deputy Administrator, National Genetic Resources Program, Bldg 005, rm. 215, BARC-West, Beltsville, MD 20705.

Telephone: 301/504-5059.

Done at Beltsville, Maryland, this 29th day of October, 1992.

Henry L. Shands,

Director, National Genetic Resources Program.

[FR Doc. 92-27376 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Stabilization and Conservation Service and Commodity Credit Corporation

Feed Grain Donations for the South Fork Indian Reservation of Nevada

Pursuant to the authority set forth in section 407 of the Agricultural Act of

1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Te-Moke Western Shoshone Tribe (the Tribe) of the South Fork Indian Reservation of Nevada has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the Tribe to be acute distress areas and authorize the donation of fee grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon November 6, 1992, and shall be made available through April 30, 1993, or such other date as may be stated in a notice issued by the Administrator, Agricultural Stabilization and Conservation Service.

Signed at Washington, DC on November 4, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-27374 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 92-166-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of this document by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-279-01	Monsanto Agricultural Company	10-05-92	Tomato plants genetically engineered to increase the solids content.	Florida.

Done in Washington, DC, this 6th day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-27375 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

La Manga Timber Sale, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental consequences of the La Manga Project, a timber sale proposal. After examining the project in light of the ten points of significance, 40 CFR 1509.25, it is my decision as responsible official to prepare an EIS for this project.

The Draft EIS will be issued early spring of 1993, with the Final EIS planned for the summer of 1993.

DATES: Comments concerning the scope of the analysis should be received in writing by December 31, 1993.

ADDRESSES: Send written comments to Dale Kane, NEPA and Public Affairs, El Rito Ranger District, P.O. Box 56, El Rito, NM 87530. The telephone number is (505) 581-4554.

FOR FURTHER INFORMATION CONTACT: Dale Kane, address and phone number above.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Carson National Forest, El Rito Ranger District, proposes to harvest timber within a portion of the approximately 5,217 acre La Manga Project area. Implementation is projected for the first quarter of fiscal year 1994. The USDA Forest Service will be the lead agency.

Location

La Manga Project area is on the Carson National Forest, El Rito Ranger District, in Rio Arriba County, New Mexico. It is located on the north end of the Vallecitos Federal Sustained Yield Unit (VFSYU), about 7 miles northwest of Canon Plaza, in Township 27 North,

Range 6 East, Sections 1 and 2, and Range 7 East, Sections 4, 5, 6, and 7; and Township 28 North, Range 6 East, Sections 34, 35, and 36, and Range 7 East, Sections 19, 20, 28, 29, 30, 31, 32, and 33.

Purpose

The purpose of the proposed action is to meet the intent of the Vallecitos Federal Sustained Yield Unit (VFSYU) by providing stability to the local, affected northern New Mexico communities of Canón Plaza, Vallecitos, La Madera, Las Tablas, Petaca, Tres Piedras, Ojo Caliente, El Rito, and Canjilon. This proposal also tiers to the Carson National Forest Land and Resource Management Plan (USDA, 1986) which directs that timber sales be offered at a rate of 5.5 million board feet (MMBF) per year to Duke City Lumber, the single, approved, responsible operator for the VFSYU, plus 1.0 MMBF to smaller, local operators. The La Manga Project could contribute to one-year's mill operation, more or less, depending on the decision and timber sale scheduling.

Decisions

The decisions to be made are as follows:

Should a timber sale(s) be used to help achieve the desired future condition?

If so, which areas in the La Manga analysis area should be harvested and what vegetation conditions should be created in the harvest areas?

What products should be offered (sawtimber, firewood, vigas, poles) and how much?

How should the slash be treated?

What, if any, roads should be reconstructed? Should new roads be built?

What, if any, roads should be obliterated or closed?

Which areas should be thinned?

Which areas should be allocated to old growth?

The deciding officer is Leonard Lucero, Forest Supervisor, P.O. Box 558, Taos, New Mexico 87571.

Scoping

The project was originally scoped during the summer of 1990. Several alternatives were designed, however, it was interrupted for one and one-half years. Beginning in early September,

1992, the interdisciplinary team has recently involved the public again with letters to a large mailing list, press, meetings, and an open house and field trip to obtain new issues and concerns and comments on proposed alternatives.

The current Key Issues are:

Effects on existing and potential old growth.

Effects on the ability to meet short and long-term objectives of the VFSYU to the economic stability of local communities through sales of forest products.

Effects to area soils, water quality, and fisheries. Effects on area wildlife species and their habitats.

Effects on area recreation use and visual quality.

Effects on landscape ecosystem management and biodiversity.

Alternatives

Alternatives are being developed to respond to key public issues. To date, there are seven alternatives, including a no action alternative. Each alternative responds differently to the Key Issues due to: amounts of acres proposed for harvest; locations of harvest units; types of harvest prescriptions including even-aged and uneven-aged management; amounts of old growth allocated for retention; and amounts and locations of roads constructed and reconstructed.

Supplemental Information for Public Participation

There will be a 45 day comment period on the draft EIS.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp. versus NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon versus Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin*

Heritages, Inc. versus Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement on the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 2, 1992.

William H. Moehn,

Acting Forest Supervisor.

[FR Doc. 92-27356 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-11-M

Gypsy Moth Management; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service and the Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement for gypsy moth management in the United States.

SUMMARY: The Forest Service and the Animal and Plant Health Inspection Service will prepare draft and final environmental impact statements (EIS) to analyze comprehensive, long-term gypsy moth management strategies that implement a national program for managing the European and Asian gypsy moths.

The analysis will examine the effects of national gypsy moth management programs that could be applied over broad geographic areas, in a variety of ecosystems, in various land-use settings, and over an extended period of time. The current national gypsy moth management program provides support for an integrated pest management approach. An integrated pest management approach may include

detecting gypsy moth populations; evaluating the need for treatment of gypsy moth populations; monitoring gypsy moth treatments; quarantining of gypsy moth infested areas; regulating nursery stock and outdoor household articles being shipped out of quarantined areas; suppressing or eradicating gypsy moth populations with biological or chemical insecticides; using parasite and predator management; releasing sterile or partially-sterile gypsy moths; applying silvicultural techniques; and treating gypsy moth populations using the gypsy moth pheromone.

The proposed gypsy moth management program is to apply an integrated pest management approach to existing or anticipated gypsy moth problems. This gypsy moth management program seeks to:

- Protect high-value resources from the damaging effects of the gypsy moth;
- Prevent the artificial spread of the gypsy moth to uninfested areas; Slow the natural spread of the gypsy moth;
- Eradicate isolated infestations of the gypsy moth;
- Detect, evaluate, and define the boundaries of gypsy moth infestations, and gather information to determine the need for treatment;
- Evaluate the effectiveness of gypsy moth treatments;
- Evaluate the environmental effects of the gypsy moth and gypsy moth treatments;
- Inform the public on the status of gypsy moth infestations;
- Reduce the susceptibility of forests to damaging effects of the gypsy moth; and
- Determine the risk of damaging effects to forests from gypsy moth infestations.

Under the proposed comprehensive national gypsy moth management program, the Forest Service and the Animal and Plant Health Inspection Service seek to inform the public on the status of the gypsy moth and to protect forest and urban tree resources on:

- All Federal lands;
- Private and industrial forest land;
- State and municipal forests, parks, and other public properties; and
- In forested residential areas.

A reasonable range of alternatives for national gypsy moth management programs will be presented in a draft EIS. The analysis in this EIS will lead to selection of an alternative that provides a comprehensive national program for management of the gypsy moth in the United States.

The EIS will describe the roles and responsibilities of the Forest Service, the Animal and Plant Health Inspection Service, other Federal and State agencies, and American Indian tribes in implementing a national gypsy moth management program. The EIS will examine how a national gypsy moth management program may complement or conflict with affected agencies' policies and land-use plans in the United States. It will also examine how a gypsy moth management program in the United States may complement or conflict with the management of gypsy moth infestations in Canada.

The EIS will not cover regulatory treatments of quarantined items infested with gypsy moth or actions associated with the boarding and inspection of ships entering United States seaports.

The analysis presented in the draft EIS will describe potential environmental impacts from implementing a national gypsy moth management program.

The alternatives presented in the Draft EIS will display a range in the level of protection from gypsy moth damage provided by a national program. A preliminary list of these alternatives includes:

(1) The present national gypsy moth management program of suppression and eradication related activities. Environmental effects could occur from: eradication and suppression activities; defoliation caused by gypsy moth; and the presence of gypsy moth populations in untreated areas.

(2) A new national gypsy moth management program consisting of eradication related activities only. Environmental effects could occur from eradication activities; from defoliation caused by the gypsy moth; and from the presence of gypsy moth populations in untreated areas.

(3) A new national gypsy moth management program consisting of eradication-related activities and activities directed at slowing the natural spread of the European gypsy moth. Environmental effects could occur from eradication treatments and from treatments along the edge of the generally infested area. In addition, there could be environmental effects from defoliation caused by the gypsy moth, and the presence of gypsy moth populations in untreated areas.

(4) A new national gypsy moth management program consisting of suppression and eradication-related activities, with additional activities directed at slowing the natural spread of the European gypsy moth. Environmental effects would be similar

to those for alternative 1. Additional environmental effects from gypsy moth treatments directed at slowing the natural spread could occur along the edge of the generally-infested area.

(5) No Forest Service or Animal and Plant Health Inspection Service gypsy moth management program. No suppression, eradication, slowing of spread, or other population control of gypsy moth would occur. Environmental effects could occur from defoliation caused by the gypsy moth, and by the presence of gypsy moth populations. This alternative will generate theoretical baseline information for use in comparing all alternatives.

These alternatives and brief descriptions are tentative. They may be modified, or other alternatives may emerge based upon the issues identified during scoping.

The draft EIS will examine the effects of alternative gypsy moth management programs and will analyze individual gypsy moth treatments in terms of environmental sensitivity, ecological soundness, economic efficiency, and biological effectiveness. A preferred alternative will be identified in the draft EIS.

This notice announces the beginning of the environmental analysis and decision-making process for selecting and implementing a national gypsy moth management program in the United States. This notice describes how interested and affected people may participate and contribute to the final decision on the proposal. Both agencies invite written comments on the proposal and the scope of the analysis.

DATES: Comments on subject matter to be presented in the draft EIS are encouraged. Please reply in writing by March 12, 1993.

ADDRESSES: Send written comments to: USDA Forest Service, National Gypsy Moth EIS Team Leader, 5 Radnor Corporate Center, 100 Matsonford Road, suite 200, P.O. Box 6775, Radnor, Pa., 19087-4585. FAX (215) 975-4200.

FOR FURTHER INFORMATION CONTACT: Public Affairs Specialist, National Gypsy Moth EIS Team, at the above address or by telephone at (215) 975-4150.

SUPPLEMENTARY INFORMATION: This EIS will address suppression and eradication of the European and Asian gypsy moths. Suppression refers to efforts to reduce populations, defoliation, and tree mortality from the gypsy moth where it has been in existence for several years. Eradication refers to complete elimination of a new occurrence of the gypsy moth. The authority and responsibility for these

actions are vested in the Secretary of Agriculture who has discretionary authority to protect trees and forests on the National Forest System lands and in cooperation with others, on other lands in the United States from natural and man-made causes and plan, organize, direct, and perform measures to prevent, retard, control, or suppress insect infestations affecting trees. (Sec. 5 of the Cooperative Forestry Assistance Act of 1978 as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.)

The Organic Act (7 U.S.C. 147a) authorizes the Secretary of Agriculture to carry out operations to eradicate insect pests. The Federal Plant Pest Act (7 U.S.C. 150dd) authorizes the Secretary of Agriculture to use emergency measures to prevent dissemination of plant pests new to or not widely distributed throughout the United States.

On April 15, 1985, the Record of Decision for the final EIS on gypsy moth suppression and eradication projects was signed jointly by the Forest Service and the Animal and Plant Health Inspection Service. The Record of Decision for Gypsy Moth Suppression and Eradication Projects, 1985, states that:

(1) There will be federal support for gypsy moth suppression and eradication projects on lands of all ownerships; and

(2) Federal assistance will be available upon request for suppression and eradication projects that use an integrated pest management approach.

Forest Service and Animal and Plant Health Inspection Service cooperation for gypsy moth detection, monitoring, evaluation, quarantine, inspection, suppression, eradication, and silvicultural activities is currently available to States and to other federal agencies.

The European gypsy moth has spread throughout a third of the susceptible forests in the eastern United States. Nearly half of all gypsy moth-caused defoliations reported since 1924 has occurred in the last 12 years (1980 to 1991). Average annual defoliation over this period was 4.2 million acres. In 1992, 3.4 million acres of forest were defoliated by the gypsy moth and an additional 1.2 million acres would have been defoliated without treatment. Historic trends indicate that as the gypsy moth spreads, the average annual acreage defoliated by the insect will continue to increase.

The European gypsy moth is spreading south and west from the generally infested area in the East and is expanding throughout central Michigan and southern Canada. The European gypsy moth is presently established in

the District of Columbia and all, or portions of, 16 states: Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Isolated infestations of the European gypsy moth have occurred in 20 states: Alabama, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Utah, Washington, and Wisconsin. Infestations in these states have been, or are in the process of being, eradicated.

Since its introduction in 1869, the European gypsy moth has become a major forest pest in North America. The insect altered forest land and wildlife habitat in the eastern United States and Southeastern Canada; adversely affected tree health and vigor; reduced property values; posed safety and human health hazards; caused temporary decline in the aesthetic value of public and residential forests and trees; and routinely created a problem for homeowners, forest managers, and people who enjoy the outdoors.

About 287 million acres of forest land in the United States are susceptible to defoliation by the gypsy moth. Defoliation dramatically affects the health, productivity, recreational quality, and beauty of America's forests and parks. Defoliation leads to a decline in tree health and vigor, poses safety and human health hazards, and reduces property values and enjoyment of the outdoors.

The European gypsy moth caterpillars feed on the leaves of susceptible trees in the spring. High insect populations can defoliate entire stands of trees. Damage to forest resources and the adverse effects of defoliation are most pronounced along the edge of the generally infested area where the gypsy moth is entering new territory. This is now occurring in parts of Michigan, North Carolina, Ohio, Virginia, and West Virginia. In severe outbreaks the insect feeds on a wide range of hosts. Over 500 plant species are known to be eaten by this pest. Defoliation weakens trees. Trees further stressed by repeated defoliations, drought, pollution, recent stand thinning, other insects, or root diseases can die.

Tree death in areas defoliated by gypsy moth can average 15 to 20 percent, and up to 100 percent with repeated defoliation. This can lead to changes in forest composition that make the forest less susceptible to future

insect outbreaks, but may also be less aesthetically or economically desirable. These changes also affect wildlife habitat (both beneficially and detrimentally), threatened and endangered species, scenic quality, and biological diversity. Changes in forest cover may also affect water quality and quantity, and watershed stability. The risk of forest fire may also increase with accumulation of dead and fallen trees from mortality caused by gypsy moth outbreaks.

The Asian gypsy moth, which is the same species as the European gypsy moth, entered Oregon, Washington, and British Columbia from East Asia. Introduction of this insect occurred by transportation of gypsy moth eggs to these ports from Russia. Upon hatching the larvae were blown or carried onto shore. Action was taken in 1992 to eradicate all known infestations in Canada and the United States.

The need to annually suppress established population of the Asian gypsy moth will be avoided if eradication efforts are successful. However, if the insect becomes established in North America, it could have major environmental, social, and economic consequences. For example, suppression costs over 40 years beginning in the year 2000 are estimated at \$821 million. Projected value of losses for recreation, travel, and tourism in Oregon and Washington for the same time period is \$2 billion. Estimated losses for commercial timber are \$1.8 billion.

The resources affected by the Asian gypsy moth are essentially the same as those affected by the European gypsy moth, but the potential effects are more acute. The rate of spread of the Asian gypsy moth is more rapid due to the female's ability to fly. Based on observations in Russia, preferred foods of the Asian gypsy moth are larch, oak, poplar, and alder, which are prevalent in the Western United States. The Asian gypsy moth also has a wider host range (over 600 species) of plants than the European gypsy moth. These basic biological differences increase the cost and logistics of detection, evaluation, suppression, eradication, and monitoring actions.

The purpose of this EIS is to:

(1) Analyze alternatives for a national gypsy moth management program designed to reduce the unacceptable damage to forest and tree resources in ways that respond to the variety of physical, biological, social, and economic conditions that exist across the nation; and

(2) Analyze treatment methods available through a federal program for gypsy moth management.

The analysis for this draft EIS will address potential issue, opportunities, and concerns relating to both the components of integrated pest management and the unacceptable effects caused by gypsy moth. Some of these issues include:

(1) Aerial spraying of insecticides and their effects on other insects and organisms;

(2) Safety associated with the use of aircraft;

(3) Effectiveness of chemical and biological insecticides;

(4) Gypsy moth defoliation and its effects on biological diversity and forest ecosystems;

(5) Human health concerns from exposure to chemical and biological insecticides;

(6) Human health concerns associated with the gypsy moth;

(7) Potential effects of gypsy moth damage and treatments on threatened and endangered species and their habitat;

(8) Effects of treatments and defoliation on water quality and yields;

(9) Effects of gypsy moth damage versus treatments in wilderness and natural areas;

(10) Economic effects of gypsy moth management programs;

(11) Economic effects resulting from quarantine;

(12) Loss of trees in urban and community settings;

(13) The merits of silvicultural treatments;

(14) Effects of biological and chemical insecticides used by the public on ground water, other insects and organisms, human health, and urban and rural environments in the absence of a federal gypsy moth management program;

(15) Effects of gypsy moth caused defoliation on wildlife, water, trees, aesthetic quality, economic value, and ecosystems in the absence of a federal gypsy moth management program; and

(16) Implications of the establishment and rapid spread of the Asian gypsy moth and risks to North American forests.

The draft EIS will review research and other information about the gypsy moth, and analyze methods that are currently being used to affect gypsy moth populations, or which are being studied for future use. These methods are:

—Use of diflubenzuron and *Bacillus thuringiensis* Bt (currently in frequent use);

—Use of the gypsy moth nucleopolyhedrosis virus, mating disruption, inherited gypsy moth sterility, silvicultural treatments, and manual treatments (currently in limited use or being studied); and

—Use of *Entomophaga maimaiga*, a fungus that attacks gypsy moth (currently being studied).

In addition to alternative treatment methods, this EIS will focus on the effects of alternative national gypsy moth management programs and on the collective effects of methods within those programs.

All national gypsy moth management program alternatives and all treatment methods will be evaluated on how they:

—Protect high-value resources from the damaging effects of the gypsy moth;

—Slow the natural spread of the European gypsy moth;

—Reduce the artificial spread of the gypsy moth;

—Prevent establishment of the gypsy moth in uninfested areas of the United States; and

—Reduce the susceptibility of forests to damaging effects of the gypsy moth.

Note: The insecticides acephate, carbaryl, and trichlorfon (insecticides available in the 1985 EIS) are no longer used in Federally-funded suppression and eradication projects, and will be eliminated from consideration in this EIS as insecticides (or) components of suppression and eradication projects.

The Forest Service and the Animal and Plant Health Inspection Service are seeking information and comments from Federal, State and local agencies, cooperators, environmental and conservation organizations, American Indian tribes, industry, universities, organizations, and individuals who may be interested or affected by a proposed national gypsy moth management program. It is important that people who care about forests and urban and community trees, and people interested or concerned about treatment of gypsy moth populations participate now.

It is important that those interested in participating raise their issues early in the process. The Forest Service and the Animal and Plant Health Inspection Service believe it is important to give the public notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. versus NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that

could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon versus Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. versus Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 120-day public input period so that substantive comments and suggestions are made available to the Forest Service and the Animal and Plant Health Inspection Service at a time when they can meaningfully consider them and respond to them in a draft EIS.

To assist the Forest Service and the Animal and Plant Health Inspection Service in identifying and considering issues on the proposed action, comments on the scope of the analysis in the EIS should be as specific as possible. Comments may also address alternatives and the scope of the proposal to be discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points. This public input will be used to prepare the alternative gypsy moth management programs that will be published in the draft EIS.

A letter inviting comments and suggestions will be sent to State and Federal agencies, interested organizations, and potentially affected individuals. A news release requesting public participation will be issued in conjunction with the publication of this notice. The public input period for comments on a proposed national gypsy moth management program will end approximately 120 days after the date the Environmental Protection Agency publishes this notice in the **Federal Register**.

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review approximately one year following the close of the public input period on this proposal. A notice of availability of the draft will appear in the **Federal Register** at that time. At the end of the comment period on the draft EIS, comments will be analyzed and considered by the Forest Service and the Animal and Plant Health Inspection Service in preparing the final EIS. The final EIS is scheduled to be completed approximately eight months following the close of the comment period on the draft EIS. Until a final EIS is approved, gypsy moth suppression and eradication

activities will continue under direction in the 1985 Final Environmental Impact Statement for Gypsy Moth Suppression and Eradication Projects.

The responsible Forest Service and Animal and Plant Health Inspection Service officials will document the final decision and supporting reasons for the decision in a Record of Decision that will accompany the final EIS. The Forest Service is the lead agency and the Animal and Plant Health Inspection Service is the cooperating agency on this project. F. Dale Robertson, Chief, Forest Service, and Robert Melland, Administrator, Animal and Plant Health Inspection Service, are the responsible officials.

Dated: November 5, 1992.

Allan J. West,

Deputy Chief, State and Private Forestry.

[FR Doc. 92-27311 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-11-M

ARCTIC RESEARCH COMMISSION

Arctic Research Commission Meeting

November 2, 1992.

Notice is hereby given that the Arctic Research Commission will hold its 29th Meeting in Seattle, WA, December 1-3, 1992. On Wednesday, December 2, a Business Session open to the public will begin at 1:15 p.m. in the Directors Conference Room, Applied Physics Lab., 1013 NE., 40th Street. Agenda items include: (1) Chairman's Report; (2) Comments from agencies and organizations; (3) Other topics; (4) Concurrence on draft Goals Report, and (5) Concurrence on draft Annual Report. On Thursday, December 3, the Business Session open to the public will reconvene at 9 a.m. at the location above during which Arctic logistic capabilities and coordination will be discussed.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact person for more information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 202-371-9631 or TDD 202-357-9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 92-27306 Filed 11-10-92; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Ken Park, Also Known as Kwan Park

Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Ken Park, also known as Kwan Park, 15421 Vista Serena, Los Altos Hills, California 94022.

On December 15, 1989, Ken Park, also known as Kwan Park, was convicted in the United States District Court for the Northern District of California of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991)) (EAA),¹ provides that, at the discretion of the Secretary of Commerce,² no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Park's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Park permission to apply for or use any export license,

¹ The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economy Powers Act (50 U.S.C.A. 1701-1706 (1991)), continuing in effect the Export Administration Regulations and, to the extent permitted by law, the provisions of the Act.

² Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 15, 1999. I have also decided to revoke all export licenses issued pursuant to the EAA in which Park had an interest at the time of his conviction.

Accordingly, it is hereby—

Ordered

I. All outstanding individual validated licenses in which Park appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Park's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 15, 1999, Ken Park, also known as Kwan Park, 15421 Vista Serena, Los Altos Hills, California 94022, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Park by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services

may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until December 15, 1999.

VI. A copy of this Order shall be delivered to Park. This Order shall be published in the **Federal Register**.

Dated: November 3, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-27297 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-427-804, C-427-805 (France), A-428-811, C-428-812 (Germany), A-412-810, C-412-811 (United Kingdom), C-351-812 (Brazil)]

Postponement of Final Antidumping and Countervailing Duty Determinations: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France, Germany and the United Kingdom; and Notice of Rescheduling of Public Hearing: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION ON ANTIDUMPING DUTY INVESTIGATIONS

CONTACT: Edward Easton (France), Cynthia Thirumalai (Germany), or Michael Ready (United Kingdom), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone numbers: (202) 482-1777, 482-4087 or 482-2316, respectively.

FOR FURTHER INFORMATION ON COUNTERVAILING DUTY INVESTIGATIONS

CONTACT: Julie Ann Osgood (France), Rick Herring (Germany), Stephanie Hager (United Kingdom), Office of Countervailing Investigations, or Philip Pia (Brazil), Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone numbers: (202) 482-5260, 482-3530, 482-5055, or 482-3691 respectively.

Notice of Postponement

The Department of Commerce (the Department) is postponing the date of its final determinations in these investigations, except for Brazil, until January 11, 1993. The final determination in the Brazilian investigation has been postponed until January 25, 1993 (see, 57 FR 48020; October 21, 1992).

Antidumping duty Investigation Case Histories

France

Since the Department issued its preliminary determination in this investigation (57 FR 44556, September 28, 1992) the following events have occurred.

On September 21, 1992, Usinor Sacilor (Usinor) submitted an additional supplemental response. The Office of Accounting recommended that the Department not verify Usinor's submissions because they contained substantial material errors and deficiencies. In addition, cost of production and constructed value information provided in the supplemental response were calculated using incorrect methodologies.

On October 22, 1992, Usinor requested that the Department postpone the final determination 60 days, as provided for in Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1673d(a)(2)).

Germany

Since the Department issued its preliminary determination in this investigation (57 FR 44551, September 28, 1992), the following events have occurred.

On September 24, 1992, Saarstahl AG (Saarstahl) provided, as previously requested by the Department, constructed value information. Verification of Saarstahl's responses occurred October 1-6, 1992, in Germany. On October 22, 1992, Saarstahl made its request to postpone the final determination 30 days, as provided for in 19 U.S.C. 1673d(a)(2).

United Kingdom

Since the Department issued its preliminary determination in this investigation (57 FR 44554, September 28, 1992), the following events have occurred.

Verification of United Engineering Steels' (UES) responses occurred October 8-12, 1992. On October 21, 1992, UES requested a 30-day postponement of the final determination, as provided for in 19 U.S.C. 1673d(a)(2). UES then amended its request on October 26, 1992, by requesting an extension of 60 days in order to maintain a common final determination date with the investigation of imports of the subject merchandise from France.

Postponement of Final AD Determinations

Since affirmative preliminary determinations were issued in all three investigations and respondents in these investigations account for a significant proportion of imports of the subject merchandise from their respective countries, respondents are, therefore, able to request that the final determinations be postponed under section 735(a) of the Act. However, due to current administrative and scheduling constraints, the Department is unable to grant respondents' requests in full for a 60-day postponement. Specifically, on January 26, 1993, the Department must issue its preliminary determinations in the 42 antidumping investigations involving certain carbon steel flat-rolled products from various countries. We note also that the Department has made efforts in the past to accommodate the respondents in these investigations. In recognition of respondents' concerns, the department is postponing to the extent possible its final determinations in these investigations until January 11, 1993.

Postponement of Final CVD Determinations

On October 16, 1992, in accordance with section 705(a)(1) of the Act, we aligned the final determinations in the countervailing duty (CVD) investigations involving the merchandise subject to these investigations with the final determinations in the companion antidumping duty (AD) investigations (see, 57 FR 48020, October 21, 1992). Therefore, the final CVD determinations in these investigations, except for Brazil, will now be postponed until January 11, 1993, as well. The Brazilian countervailing duty final determination is due not later than January 25, 1993.

Public Comment

In accordance with 19 CFR 353.38(b) and 355.38(b), we will hold public hearings to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the AD hearing schedules are as follows:

Country	Date	Time	Room
France.....	November 23, 1992.	10 am....	2830
Germany	November 24, 1992.	10 am....	2830
United Kingdom	November 24, 1992.	2 pm	2830
The CVD hearing schedules are as follows:			
Brazil	December 3, 1992.	2 pm	1411
France.....	December 7, 1992.	1 pm	3708
Germany	December 3, 1992.	10 am....	1617
United Kingdom	December 2, 1992.	11 am....	3708

All hearings will be held at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date and place of the hearings 48 hours prior to the scheduled time.

In accordance with 19 CFR 353.38, for the AD hearings, case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than November 12, 1992, for France; and no later than November 13, 1992, for Germany and the United Kingdom. Additionally, rebuttal briefs must be submitted no later than November 19, 1992, for France, no later than November 20, 1992, for Germany and the United Kingdom; and no later than December 1, 1992 for Brazil.

In accordance with 19 CFR 355.38 for the CVD hearings, case briefs or other written comments must be submitted to

the Assistant Secretary for Import Administration no later than November 24, November 23, November 18, and November 17, 1992, for Brazil, France, Germany, and the United Kingdom, respectively. Additionally, rebuttal briefs must be submitted no later than November 30, and November 24, 1992, for France and the United Kingdom, respectively, and December 1, 1992, for Germany and Brazil.

This notice is published pursuant to 19 CFR 353.20(b).

Dated: November 6, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-27412 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-812]

Postponement of Final Antidumping Duty Determination: New Steel Rails from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION ON ANTIDUMPING DUTY INVESTIGATIONS

CONTACT: Erik Wargha or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone numbers: (202) 482-0922 or 482-0186, respectively.

Notice of Postponement

The Department of Commerce (the Department) is postponing the date of its final determination in this investigation until February 10, 1993.

Case History

Since the Department issued its preliminary determination in this investigation (57 FR 47450, October 16, 1992) the following events have occurred.

Verification of British Steel plc (PLC)'s responses occurred October 19-21, 1992, in the United Kingdom and October 29, 1992, in Schaumburg, Illinois. On October 23, 1992, PLC made its request to postpone the final determination 50 days, as provided for in 735(a) of the Tariff Act of 1930, as amended (the Act).

Postponement of Final Determination

Since an affirmative preliminary determination was issued in this investigation and respondent in this investigation accounts for a significant proportion of imports of the subject merchandise from the United Kingdom, respondent is able to request that the final determination be postponed under section 735(a) of the Act. In response to respondent's request, the Department is postponing the final determination in this investigation until February 10, 1993.

Public Comment

In accordance with 19 CFR 353.38(b), at both petitioners' and respondent's request, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing schedule will remain as announced in the notice of preliminary determination.

This notice is published pursuant to 19 CFR 353.20(b).

Dated: November 5, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-27409 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-810]

Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2778.

FINAL DETERMINATION: We determine that certain welded stainless steel pipe (WSSP) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination and postponement of final determination 57 FR 27731 (June 22, 1992), the following events have occurred.

Verification of respondents' responses to the Department of Commerce's (the Department) questionnaires regarding sales information took place in Korea in July 1992. Verification of respondents' responses to the Department's questionnaires regarding cost of production (COP) information took place in Korea in June and July of 1992.

We received requests for a public hearing from Pusan Steel Pipe Co., Ltd. (PSP) and Sammi Metal Products Co., Ltd. (SMP), on June 30, 1992, and from petitioners on June 29, 1992. PSP, SMP, and petitioners filed case briefs on September 21, 1992, and filed rebuttal briefs on September 28, 1992. A public hearing was held on September 30, 1992.

Scope of Investigation

The merchandise subject to this investigation, WSSP, is austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines.

Imports of these products are currently classifiable under the following United States Harmonized Tariff Schedule (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060 and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1991, through November 30, 1991.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or

similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons on the basis of: (1) Specification or alloy (*i.e.*, ASTM A-312 specification or equivalent national standard); (2) size (*i.e.*, nominal pipe size); (3) finish (*i.e.*, hot or cold); (4) wall thickness schedule; and (5) end finish (*i.e.*, plain end or bevelled end). We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

We made sales comparisons on the basis of theoretical weight, the weight basis on which respondents reported that U.S. sales were made.

Fair Value Comparisons

To determine whether sales of WSSP from Korea to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

A. PSP

1. We excluded two of PSP's U.S. sales of returned goods from our calculations. (See *Comment 10*).

2. We recalculated credit expenses on purchase price sales from the date of shipment from Korea to the date of payment by the customer. (See *Comment 6*). Where dates of shipment from Korea were not reported, we used as best information available (BIA) the weighted-average credit period calculated for all U.S. sales.

3. We recalculated the U.S. interest rate for purchase price sales based on the results of verification.

B. SMP

1. We recalculated the U.S. interest rate on purchase price sales based on changes from verification.

2. We recalculated credit expenses on purchase price sales from the date of shipment from Korea to the date of payment by the customer. (See *Comment 6*).

3. We recalculated SMP's difference in merchandise adjustments (difmers) for similar products based on changes in the variable cost of manufacturing from verification.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exception:

SMP

We recalculated indirect selling expenses and the home market interest rate based on the results of verification.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether PSP and SMP had made home market sales at less than their respective COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales were at prices above the COP, we disregarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities and were over an extended period of time. We calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing. The submitted COP and CV data was relied upon, except in the following instances where the costs were not appropriately quantified or valued:

PSP

1. For both COP and CV, the Department adjusted PSP's submitted material costs to reflect the POI requisition value. (See *PSP Cost Comment 1*).

2. For both COP and CV, the Department increased PSP's submitted labor and overhead costs (excluding slitting) to correct the effect of respondent's overstatement of the POI production quantity. (See *PSP Cost Comment 2*).

3. For both COP and CV, the Department adjusted PSP's G&A expense calculation used for the preliminary determination, to exclude freight for export sales, include miscellaneous non-operating and extraordinary income and expense items, and include the total amount of duty drawbacks reported for 1991.

4. For both COP and CV, the Department adjusted PSP's interest

expense calculation used for the preliminary determination, to include interest income from short-term deposits, and to include the total amount of duty drawbacks reported for 1991.

5. The Department revised PSP's interest expense adjustment for CV (for both exporters sales price (ESP) and purchase price transactions) used for the preliminary determination, by including trade notes receivable in the calculation, which reduced COP interest expense by an amount attributable to maintaining accounts receivable to avoid double counting imputed credit.

6. We converted the submitted COP and CV data, which were based on actual weight, to theoretical weight, by applying the submitted conversion factors. (See *PSP Cost Comment 3*).

SMP

1. For both COP and CV, the Department adjusted respondent's submitted POI material costs for Sammi Chicago Corporation (SSC) relating to the manufacture of cold-rolled steel coil, to reflect material costs as recorded in SSC's monthly Cost of Sales Statements (verification Exhibit 10). (See *SMP Cost Comment 8*).

2. For both COP and CV, the Department adjusted SSC's submitted G&A calculation to include amortization of deferred charges reported in its 1991 audited financial statements, and to exclude amounts for business promotion, advertising and export expense. (See *SMP Cost Comment 5*).

3. For CV only, the Department used the submitted transfer prices between SSC and SMP for purchases of cold-rolled steel coil where the transfer price was above the computed COP. Additionally, for CV, the Department used the submitted transfer price between SSC and SMP for slitting services where the transfer price was above the computed COP.

4. For both COP and CV, the Department adjusted SMP's G&A expense used for the preliminary determination to exclude all gain on the sale of its forging factory and adjacent land areas. (See *SMP Cost Comment 2*).

5. The Department revised SMP's CV interest expense calculation used for the preliminary determination, by including trade notes receivable in the calculation which reduced COP interest expense by an amount attributable to maintaining accounts receivable to avoid double counting imputed credit.

6. We converted the submitted COP and CV data, which were based on actual weight, to theoretical weight, by applying the submitted conversion factors. (See *SMP Cost Comment 1*).

In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of a company's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the total of COM and general expenses because, for each of the respondents, actual profit on home market sales was less than eight percent. See section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a) based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners state that the Department should disallow a duty drawback adjustment on all U.S. sales because our analysis results in unfair comparisons. First, petitioners claim that in making this adjustment, the Department did not determine whether there was an amount equal to these import duties included in the home market prices that were used to calculate FMV. As a result, the Department's preliminary analysis unfairly compares U.S. prices that are inclusive of import duties with an average FMV derived from home market prices that are both inclusive and exclusive of import duties.

According to petitioners, this is not an "apples-to-apples" comparison, which is a fundamental goal of the statute, as stated by the court in *Smith-Corona Group v. United States*, 713 F.2d 1568, 1578 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984). To make a fair comparison, the Department should not adjust U.S. price upward for duty drawback, unless import duties are included in the home market prices. Therefore, there must be on the record evidence of the amount of imported raw material that was used by respondents to manufacture domestically sold merchandise. Petitioners state that both SMP and PSP ignored the Department's requests for this information, and that

without this information, a fair, "apples-to-apples" comparison is not possible.

Secondly, petitioners claim that respondents did not establish that there were sufficient imports of coil to account for all exports of WSSP to the United States. Petitioners recognize that the Department does not require that "raw materials used in producing the exported merchandise actually come from imported sources, but rather assesses whether there were sufficient imports of relevant raw materials to account for the duty drawback received on the exports of the manufactured product." See Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 57 FR 42,942, 42, 946 (Sept. 11, 1992). (Circular Welded Pipe from Korea). In this case, petitioners argue that neither SMP nor PSP has satisfied the requirement that they demonstrate that sufficient raw material imports can be linked to the U.S. exports at issue because they never answered the Department's questions as to the quantity and value of raw materials purchased from foreign sources for production of domestically sold WSSP.

Although respondents have shown that they received duty drawback on U.S. sales, petitioners assert that the Department does not know whether there were sufficient imports of raw materials to account for duty drawback received. Petitioners further point out that the evidence of record in this investigation differs significantly from that in the recently completed investigation of Circular Welded Pipe from Korea. In that case, the Korean respondents, including PSP, responded to the agency's questions as to the quantity and value of raw materials purchased from foreign sources for domestic sales. The agency, thus, was able to ensure that there were sufficient imports of the relevant raw materials to account for the drawback received. Here, petitioners claim, no such conclusion is possible. Therefore, respondents' claims should be denied in full.

Thirdly, petitioners contend that the respondents' assignments of duty drawback to U.S. export sales were arbitrary. Petitioners question respondents' method of assigning the duty drawback amounts to individual U.S. sales because it is clear that the merchandise identified in the import permits have no correlation to the export sale. SMP and PSP have stated that they cannot trace the imported raw material coils to the pipe manufactured from those coils, and it is unclear how SMP and PSP have assigned duty

drawback to individual export sales. Also, there is a significant variance in duty drawback amounts claimed between the various products and different sales.

For example, petitioners compared two sales in PSP's transaction margin data set of the same product and from the same invoice, and the duty drawback amounts were different. According to respondents, the duty drawback for identical products varies depending on how the duty paid on the imported raw materials is assigned by respondent to a sale. Respondents assert that different duty drawback amounts are associated with the same raw materials, depending upon whether the materials are direct or indirect imports.

Petitioners argue that to the extent that respondents can assign drawback amounts to export sales as they see fit, it is possible for respondents to manipulate prices and costs. Petitioners state that the Court of International Trade (CIT) recognized this potential for manipulating dumping margins in drawback substitution situations: "In most drawback substitution situations, there is potential for skewing antidumping calculations by granting excessive rebates or otherwise * * * *Far East Machinery Co., Ltd. v. United States*, 699 F. Supp. 309, 315 n. 12 (CIT 1988). The Court further noted its concern that the agency needed to "tighten its standards for permitting the type of adjustment at issue here", citing as an example the Department's failure to look at whether duties were allocated over all exports, not merely U.S. exports.

Petitioners claim that it is noteworthy that the Department did not examine at verification the extent to which SMP or PSP assigned duty drawback amounts to non-U.S. exports. These companies may very well have decided to assign all duty drawback amounts to U.S. exports elevate these prices, while at the same time claiming no duty drawbacks on third country exports.

Given the facts outlined above, petitioners state that, to the extent the Department determines it will grant any duty drawback adjustment, it should average the drawback amounts received over all U.S. sales to avoid the disproportionate and distortive impact that the arbitrary assignment of these drawbacks to individual sales has on dumping margins.

Respondents contend that the Department should grant a duty drawback adjustment on all U.S. sales. First, they claim that the adjustments are not predicated on proof that an amount equal to the rebated duties is

included in the home market price. Respondents state that petitioners argue that without such proof, duty drawback adjustments undermine "apples-to-apples" comparisons. No authority or precedent is cited for this argument. In fact, respondents contend, petitioners are unable to cite any authority for this test in the Act, or in a judicial or administrative decision.

Respondents point out that section 773 of the Tariff Act mandates that the U.S. price be adjusted by the amount of any import duties that have been rebated or not collected by reason of exportation. Respondents contend that unlike adjustments for rebated or uncollected taxes for which the statute expressly limits the adjustment to the amount of such taxes imposed on home market sales, section 773 places no such qualification on adjustments for duty drawback.

Second, respondents claim that the legal test for duty drawback adjustments is clear. The CIT has consistently upheld the Department's two-pronged test for duty drawback adjustments, which requires: (1) That the import and duty rebate are directly linked to, and dependent upon, one another; and (2) that the company can demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the export of the manufactured product. According to respondents, neither of these prongs implies the "condition" petitioners seek to impose.

Furthermore, respondents state that they have established, and the Department has verified, that there were sufficient imports of coil to account for all U.S. exports of pipe through verification of the individual drawback applications for several sales randomly selected by the Department. Respondents state that the Department verified that, under the drawback system, respondents must link a documented export of pipe to a documented importation of steel coil suitable for use in the manufacture of the exported pipe. Furthermore, Korean customs authorities review these documents to verify that: The imported coil is suitable for the exported pipe; that the duties have been paid on the import; and that the import duties have not been previously rebated. Respondents claim that this individual drawback application system ensures that the Department's second prong is satisfied.

Respondents note that the information relating to aggregate quantities and values of imported raw materials is irrelevant. The Department has stated

that "it is not the Department's practice to account for a sufficient amount of imported coil to cover all products under the review sold to third countries, as well as the United States." Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 53 FR 41,218 (1988). Also, asking for the total quantities of imported raw materials used for domestic and export sales is another way of asking whether there were sufficient imports in the aggregate to cover a drawback. Since the respondents have shown on a sale-by-sale basis that there are sufficient imports to cover duty rebates on exports, the same must hold true on an aggregate basis.

Respondents also claim that there is no evidence on the record that respondents can, or did, manipulate the assignment of duty drawback. Petitioners' arguments should be dismissed as a legal matter by the Department since they seek to require respondents to demonstrate that specific imports were actually physically incorporated into the exported product on a sale-by-sale basis. Respondents state that under the principle of drawback substitution, this is neither required nor is it feasible. Respondents submit that the drawback procedures they followed are the standard operating procedures established under Korean law, which were in place long before this dumping action was filed.

Furthermore, the variation in drawback amounts associated with different products was examined by the Department during verification. These differences in duty payments are the result of the fact that some imports were imported by PSP or SMP themselves, while others were indirect purchases.

In sum, respondents contend that petitioners' claim that respondents may have chosen to match import permits to export permits in such a way as to maximize the calculation of U.S. price for purposes of a possible antidumping duty investigation is without merit. The verified record demonstrates that the respondents have established that the two-pronged test for duty drawback has been met and thus their duty drawback claims should be allowed as submitted.

Department Position

We agree with respondents. Section 772(d)(1)(B) of the Act requires an upward adjustment to U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." Based on the legislative history of the antidumping law, the CIT has

interpreted the purpose of this adjustment as follows:

(t)o prevent dumping margins from arising because the exporting country rebates import duties and taxes for raw materials used in exported merchandise, the antidumping law provides for an offsetting adjustment in the calculation of United States price.

Far East Machinery Co., Ltd. v. United States, 12 C.I.T. 428, 430 (1988), citing, *Carlisle Tire & Rubber Co. v. United States*, 10 C.I.T. 301 (1986), and S. Rep. No. 16, 67th Cong., 1st Sess. 12 (1921). Furthermore, an adjustment for duty drawback is required under the General Agreement on Tariffs and Trade (GATT), art. VI, para. 4, because duty drawback encourages international trade.

In determining whether a duty drawback adjustment is appropriate, the Department applies a two-prong test establishing that: (1) The import duty and rebate are directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment can demonstrate that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. The CIT has consistently found this test to be reasonable. *Far East Machinery Co., Ltd. v. United States*, 12 C.I.T. 972 (1988) (*Far East Machinery*); *Carlisle Tire & Rubber Co. v. United States*, 11 C.I.T. 168 (1987) (*Carlisle Tire*).

Based on information in the responses to the Department's questionnaire and on findings at verification, the respondents' methodologies for calculating a duty drawback adjustment meet both elements of this test. With respect to the first prong of the test, the CIT has stated that duty drawback "may give rise to an adjustment to United States price provided import duties are actually paid and rebated, and there is a sufficient link between the cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)." *Far East Machinery*, 12 C.I.T. at 976, quoting *Huffy Corp. v. United States*, 10 C.I.T. 214 (1986). There is no dispute that the first prong of the test has been met in this case. At verification, we confirmed that duties on imported raw materials were, in fact, paid and rebated upon export of the manufactured product. Accordingly, respondents were able to establish the necessary link between duties imposed and rebated. We note that the finding in this case is consistent with prior cases involving imports from Korea (see, *Carlisle Tire*).

The second prong of the test encompasses the principle of drawback

substitution. With respect to this portion of the test, the CIT has agreed that "there is no requirement that specific input be traced from importation through exportation before allowing drawback on duties paid." *Far East Machinery*, 12 C.I.T. at 975. Therefore, like governments applying duty drawback programs, the Department does not attempt to determine whether raw materials used in producing the exported merchandise actually came from imported stock, but rather assesses whether there were sufficient imports of relevant raw material to account for the duty drawback received on the exports of the manufactured product. The Department verified respondents' drawback applications, which documented sufficient imports of raw materials to account for the drawback claimed. In each drawback application reviewed by the Department, it was shown on import permits that sufficient imports of appropriate coils existed for the claimed exported amounts of finished pipe. Therefore, respondents have met the second requirement for a drawback adjustment.

We do not agree with the petitioners that respondents' assignment of duty drawback rebates was arbitrary. We carefully examined at verification the documents used by SMP and PSP in the regular course of business to link import permits to export permits. For example, verification exhibit DD-1 contains a worksheet which SMP maintains and updates on a regular basis. In the column on the left margin, SMP lists all import permits by grade (e.g., 304, 304L, 316, or 316L), size (2.5 mm., 3.0 mm., etc.), and date. Along the top row, SMP lists all export permits in chronological order. As explained in our verification report, when a drawback application is prepared, SMP records the export permit and links it to an import permit by drawing down on the first available import permit with the appropriate grade and size. If there is not enough coil in the first appropriate import permit to cover the claimed exported amount of finished pipe, then SMP draws down the remaining balance from the next appropriate import permit. We verified this procedure and disagree with petitioners that this type of assignment is arbitrary.

Other claims by petitioners do not speak to the test traditionally applied by the Department, but rather seek to impose additional requirements for duty drawback claims, which are not required by the statute, the regulations, or past Department practice. There is no basis for petitioners' argument that the Department should not make a duty

drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials. The only requirements of section 772(d)(1)(B) are (1) "import duties imposed", and (2) rebate, or non-collection, of those duties "by reason of the exportation of the merchandise to the United States." The statute mandates the adjustment without reference to whether products sold in the home market are made with imported raw materials. Where such requirements for adjustment are intended, they have been expressed in the statute (see, e.g., section 772(d)(1)(C) allowing adjustment to USP for value added tax (VAT) only if the VAT has been charged and paid on merchandise sold in the home market). Therefore, we disagree with petitioners that the Department should add a third prong to the test for drawback adjustments requiring examination of the relative usage of imported materials in export and home market sales.

Comment 2: Respondents claim that they properly calculated CV by including import duties, and furthermore, that there is nothing in the statute or regulations that requires that the amount of the average duty included in CV equal the amount of the adjustment to USP for duties rebated upon export. Respondents also argue that the Department's decision in *Standard Pipe from Korea* to include duties in CV, but deny the claim for duty drawback, was based on BIA because respondents did not report CV exclusive of import duties as requested in a deficiency letter. In this case, however, respondents point out that the Department did not request that CV be reported exclusive of duties. Therefore, the use of BIA in this case is not appropriate.

Respondents state that section 773(e) of the Act specifically states that the cost of materials should be exclusive of any internal taxes, but that it does not state specifically that these costs should be exclusive of duties. In fact, respondents continue, the Department's cost questionnaire states that material costs should include "duties and other expenses normally associated with obtaining the materials", and that for CV, respondents should "include import duties." Respondents claim that calculating a separate cost for domestic and export merchandise produced in the same facilities goes against one of the Department's basic rules of obtaining identical costs for identical products.

Secondly, respondents state that the statutory provision for the calculation of U.S. price does not limit the amount of

duty drawback that is allowed to the amount included in FMV. According to respondents, the Department has never made the level of duty in FMV a requirement for granting a duty drawback adjustment to U.S. price. Nowhere in the statute or in the Department's two-pronged test, maintain respondents, is there an exception for circumstances in which FMV is based on CV.

Respondents cite a past case, *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* ("PET Film"), 56 FR 16,305 (1991) (Final Affirm. Determination), in which they claim the Department recognized that no correlation between duty paid and duty rebated is required.

Petitioners state that respondents' CVs for each product are flawed when used for comparison to U.S. sales. Because the actual amount of duty included in the material costs is an average of all duties paid, allocated over all coil, both foreign and domestic, the amount of duty rebated upon exportation of pipe will differ from the amount of duty used in the CVs reported. To the extent that the Department accepts respondents' drawback adjustments, petitioners contend that as BIA, all CV comparisons should be denied duty drawback adjustments to U.S. price.

Petitioners contend that the Department should deny the drawback adjustment to U.S. price in CV comparisons as it did in the recent case, *Circular Welded Pipe*. In this case, petitioners continue, the Department is confronted with a data base that contains exactly the same defects, i.e., 'unspecified duties are included in CV, as compared with specified, but unequal duties on the U.S. side. Petitioners contend that the Department cannot rely on this data base for its final comparison merely because it did not ask respondents to exclude duties in responding to the cost questionnaire. Because the evidence of record establishes that the duties included in CV do not correlate to the duty rebates claimed, it would be unfair and inconsistent with *Circular Welded Pipe from Korea* to grant a drawback adjustment to U.S. price. Accordingly, petitioners urge the Department to deny an adjustment to U.S. price for the duty drawback amounts reported in CV calculations. To establish a reasonable link between the duties imposed and those rebated, there must be a correlation between the duty allocation in CV and the allowable drawback adjustment. By definition, therefore, argue petitioners, the duty included in

the CV has to correlate to the U.S. price adjustment. In this case, as respondents admit, there is no correlation.

Department Position

We disagree with petitioners. The Department did not request that respondents in this investigation report CV exclusive of import duties, as we did in the *Circular Welded Pipe from Korea* case. In this case, respondents reported their material costs inclusive of duties, and did not identify the amount of duty included in the material cost of specific pipes. Therefore, it is impossible for the Department to exclude the duty from the reported CV, even though it was refunded upon exportation. Because we did not instruct respondents to report their material costs exclusive of import duties, and in fact instructed them in our cost questionnaire to include import duties, it would be inappropriate for us to use BIA and deny the drawback adjustment to U.S. price in CV comparisons as we did in the recent case, *Circular Welded Pipe from Korea*.

It is not true that the average duties included in CV do not correlate with the actual drawbacks granted and reported in USP. As outlined in our position to *Comment 1* of this notice, respondents have supported on the record that: (1) The import duties paid link directly to the rebates granted, and (2) they reported sufficient amounts of coil to account for the exports of pipe. Therefore, we disagree with petitioners that the duty included in CV does not correlate to the drawback granted on USP.

Moreover, it is common practice for the Department to calculate CV based on average costs, and compare the CV to USP, which is based on transaction-specific charges. Therefore, we have granted respondents adjustment to USP for duty drawback when compared to CV since they have followed the Department's explicit instructions and have satisfied the requirements of the Department's two-pronged test.

Comment 3: Petitioners state that the Department should continue to rely on theoretical prices in sales comparisons. In its response, SMP urged the Department to rely on its prices on an "actual weight" basis. Petitioners argue, however, that these "actual" weights do not reflect the true weight of the pipe. Rather, they are derived figures based on averages for wall thickness of the coil. Furthermore, the Department preliminarily found it appropriate to compare sales on the basis of theoretical weight, and no information at verification provided any reason to alter this decision.

Respondents state that they have reported sales charges and adjustments on a theoretical weight basis, and therefore, petitioners' arguments are moot.

Department Position

Given the Department's general preference for making sales comparisons on the basis on which U.S. sales were made, we made comparisons on the basis of theoretical weight. The use of theoretical weight as the basis for comparison purposes is consistent with the Department's practice with respect to pipe and tube cases. We agree with petitioners that prices and charges should be calculated on the basis of theoretical weight, and have done so for our final determination.

Comment 4: Petitioners contend that there is no basis in the record for any upward adjustment to U.S. price for VAT forgiven upon exportation of the subject merchandise. The statute provides that the Department should adjust U.S. price upward for forgiven home market taxes "only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Thus, the statute clearly states that any upward adjustment to U.S. price is restricted to those situations in which it has been established that the amount of taxes in question has been "passed through" to the home market customer and not absorbed by the manufacturer. The CIT has held that, prior to making an upward adjustment to U.S. price for forgiven home market taxes, the Department must measure the amount of the tax that was actually passed through to customers in the home market and limit the adjustment to that amount.

In this investigation, rather than measure the tax absorption, the Department assumed that 100 percent of the VAT was passed through to the customers in the Korean market. The court has stated that this assumption defeat(s) the express will of Congress." *Zenith Electronics Corp. v. United States*, 755 F. Supp. 397, 407-08 (Ct. Int'l Trade 1990), *appeal docketed*, No. 92-1043-1046 (Fed. Cir. argued Aug. 3, 1992). Thus, the adjustment is contrary to law.

Petitioners further claim that there is no basis in law for a circumstance of sale adjustment to FMV for the difference in VAT between home market and U.S. sales. The CIT has disallowed any circumstance of sale adjustment to foreign market value for the difference in taxes incurred on home market sales but not on U.S. sales of the subject merchandise. *Zenith Electronics Corporation v. United States*, 633 F.

Supp. 1382 (Ct. Int'l Trade, 1986) (*Zenith I*) and *Zenith Electronics Corporation v. United States*, 770 F. Supp. 648 (Ct. Int'l Trade, 1991) (*Zenith II*), 633 F. Supp. at 1399. Therefore, the Department should not make any adjustment to FMV for VAT incurred on home market sales but not on export sales.

Respondents claim that the Department should continue to grant their claimed adjustments for VAT forgiven on U.S. sales, and that this adjustment is in complete accordance with antidumping law and the Department's practice. Respondents note that the Department considered and rejected the same arguments advanced by petitioners in the Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., 57 FR 28,360, 28,419 (1992), and therefore, urge the Department not to alter its practice for purposes of the final determination in this investigation.

Department Position

We agree with respondents that the VAT adjustment is in complete accordance with antidumping law and the Department's past practice. We do not agree with the CIT's decisions in *Zenith I* and *Zenith II*, and have appealed this issue on its merits. Therefore, consistent with our long-standing practice, we have not attempted to measure the amount of tax incidence in the Korean home market. See *Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review*, 57 FR 92, 20241 (1992).

We do not agree that the statutory language, limiting the amount of adjustment to the amount of commodity tax "added to or included in the price" of WSSP sold in the Korean home market, requires the Department to measure the home market tax incidence. We are satisfied that the record shows that the tax was charged and paid on the home market sales.

We also disagree with petitioners that there is no basis in law for a circumstance of sale (COS) adjustment to FMV for differences in VAT payments. We do a COS adjustment in order to neutralize the effect of the ad valorem tax rate, relying on the Department's broad statutory authority to make adjustments for such differences in the circumstances of sale. As stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 57 FR 28,360, 28,419 (1992), because all home market sales were reported net of VAT, we added the same VAT amount to FMV as

that calculated for U.S. price. This is the same as calculating the actual home market tax and then performing a COS adjustment to FMV to eliminate the difference between the tax in each market. Therefore, the respondents are entitled to the adjustment to U.S. price.

Comment 5: Petitioners claim that the Department should use the best information available for SMP sales requiring a difference in merchandise adjustment (difmer). Petitioners argue that SMP has repeatedly failed to answer the agency's questions regarding how the difmers were derived, and that SMP's numerous revisions to its difmers raise serious questions as to the credibility of its data.

Petitioners summarized these revisions claiming that: (1) SMP originally claimed there were no difmers; (2) next, SMP asserted there were differences on an "actual" weight basis and provided such data; (3) then, SMP claimed there were not differences on an "actual" weight basis, but that there are differences on a theoretical weight basis; and (4) SMP asserted that the differences reported on a theoretical basis needed to be revised. Petitioners contend that it is difficult to attach any credibility to adjustment data that have been revised four times over the course of this case.

According to petitioners, it is equally disturbing that SMP failed to explain how the reported difmers were developed. Despite the Department's request for this information, SMP ignored the request. Even at verification, petitioners argue, SMP did not provide any explanation as to the materials, labor and overhead comprising the components of its difmer calculations. In the absence of this information, the difmers cannot be used. Petitioners further claim that, although the Department's verification report states that no discrepancies were noted in the data provided, it never suggested that an explanation for these figures was provided.

At this point, petitioners contend, the Department should use BIA in lieu of the difmer information. To the extent the adjustment proposed would reduce FMV to SMP's advantage, the adjustment should be denied, and to the extent an adjustment is necessary to increase FMV, the Department should use the highest weighted-average margin otherwise found for such sales. Alternatively, petitioners claim the Department should use twenty percent of the home market cost data for the difmer as BIA.

SMP contends that the Department should accept SMP's difmers. SMP does

not dispute that it was slow in developing the record regarding the calculation of the reported difmers. Nevertheless, SMP notes that at verification the Department verified SMP's compliance with the Department's model match criteria and found "no discrepancies."

During the cost verification, the Department verified the material, labor and overhead costs for U.S. and home market products. Also, during the sales verification, SMP described that the physical differences between matches of similar merchandise were based on differences in total variable cost of manufacture including the cost of materials, direct labor and variable overhead. This information was reported in its May 18, 1992 difmer submission and was verified during the cost verification. Therefore, SMP contends, the record demonstrates that the Department verified the difmer information and that the use of BIA is unwarranted.

Department Position

We agree with respondents that use of BIA in this instance is unwarranted. While it is true that throughout this investigation respondent submitted conflicting information concerning its difmers and revised it several times, the difmer information contained in its last submission on May 18, 1992 was successfully verified during the cost and sales verifications.

In the sales verification report, it states that the Department verifiers selected several difmer adjustments at random and examined the calculation of each adjustment. No discrepancies were noted in these calculations. The difmer exhibits contained in this report show clearly the reasonableness and accuracy of the similar matches SMP used in its analysis.

Furthermore, during the cost verification, the Department verified the material, labor and overhead costs that SMP reported for both U.S. and home market products. As stated by respondent and verified by the Department, SMP computed its difmer based on the difference in variable manufacturing costs by product. These costs were verified and explained in the Department's cost verification report. Therefore, we have accepted SMP's reported difmers and have used them in our final margin analysis.

Comment 6: Petitioners claim that the credit expenses reported by SMP must be adjusted to reflect proper shipment dates and bank charges. Specifically, petitioners note that the Department states in its verification report that SMP deducted an amount for bank charges

incurred for letters of credit from its interest expenses. However, the report also states that "SMP had no documents to support these charges." In light of this failure, petitioners contend that the Department should recalculate SMP's interest ratio based on the gross amount of interest.

Secondly, petitioners state that it is long-standing Department practice in purchase price situations to calculate credit based on the time of shipment from the foreign company's factory because the terms of sale are established prior to the shipment of the merchandise from the foreign production sites. Therefore, the Department should not calculate imputed U.S. credit expenses according to SMP's reported methodology, i.e., based on the number of days between the date of posting in SMP's accounts receivable ledger and the date of payment by the U.S. customer.

Respondents argue that the Department should calculate imputed credit on purchase price sales from the date the merchandise arrives in the United States, the date when an invoice is issued and an accounts receivable is posted to respondents' books. First, respondents contend that credit is not extended to a customer until an accounts receivable comes into existence, and that the Department verified that accounts receivable are not entered into respondents' books until the merchandise arrives in the United States. Therefore, the credit period does not begin until the merchandise arrives in the United States. It is only then that the seller incurs an opportunity cost as a result of not having access to the payment. Since respondents maintain title to the merchandise until it arrives in the United States, it makes no sense to impute a credit cost while the products are on the water.

Petitioners counter that whether the Department's methodology reflects respondents' bookkeeping practices is beside the point. Credit is an imputed expense because the Department does not rely on each company's bookkeeping practice.

Respondents further state that if its argument is rejected, the Department should use SMP's letter of credit and banking charges as the proper measure of actual credit costs while the merchandise is on the water, since these charges reflect the cost to SMP of borrowing to finance the "receivable." Respondents contend there is no reason why the Department may not use actual costs when they are documented and verified on the record, and therefore, the Department should use SMP's letter of credit and banking charges as the

appropriate measure of credit expenses for the period the merchandise is on the water.

Petitioners contend that since SMP was unable to substantiate its letter of credit and bank charges, they cannot be used as a measure of actual credit costs.

Finally, if the Department imputes credit costs for the entire period from shipment in Korea to payment by the customer, SMP urges the Department to deduct SMP's letter of credit and banking charges from the imputed interest cost to avoid double-counting. Since the Department's imputation of credit is intended to be a surrogate for the total borrowing costs that would have been incurred had the respondent actually borrowed in the market to fund the transaction, the imputed rate would include the letter of credit and associated banking costs. As a result, including these costs in the calculation of direct selling expenses would result in double counting of the expenses.

Respondents further argue that petitioners' statement that terms of sale are established prior to shipment of the merchandise from the foreign production site misses the point. The fact is that the risk of loss of merchandise remains on the respondents during shipment to the U.S. port. This case should be contrasted to other cases in which the Department has used the date of shipment from the home market as the starting date for imputed credit. These cases turn on the fact that this date coincides with the date an account receivable is entered in the seller's books and the seller has transferred title to the purchaser, fulfilling its obligations to the purchaser. Respondents claim that the Department has verified that these circumstances are not present in this investigation with relation to either respondent and thus, would not be justified in imputing credit during this period.

SMP further contends that contrary to the statement in the Department's verification report, SMP did provide documents verifying the calculation of bank charges used in its interest rate calculation. SMP explained that these bank charges were calculated by subtracting actual interest expenses incurred by SCC during 1991 from total interest expenses in 1991 as shown on SCC's audited financial statement. Since these borrowings are all inclusive, the actual interest paid comprises total interest charges and the remainder represents other non-interest banking charges related to these borrowings. Since the total interest related expenses are derived from SCC's audited financial statements, the only figures requiring

direct verification were the actual interest payments for the POI. According to SMP, these documents were provided and the actual expenses were verified.

Department Position

We agree with petitioners regarding the appropriate credit period. Contrary to respondents' assertions, the Department's long-standing practice is to calculate credit on purchase price sales from the time that the merchandise is shipped from the foreign production site. See, e.g., Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media from Japan, 54 FR 6433 (February 10, 1989). Because terms of sale are established prior to the shipment of the merchandise from the foreign production sites, respondents incur credit expenses on these sales from that shipment date, regardless of when the final invoices to the customers are issued. We have calculated the credit period on all purchase price sales from the date of shipment from Korea to the date of payment.

Furthermore, we disagree with respondents that the deduction of banking charges and letter of credit charges constitutes double-counting. These charges were incurred because respondent arranged with its agent in the United States to finance the sale with a letter of credit. The additional banking and letter of credit charges associated with these sales do not cover the time that payment was outstanding, but rather represent additional charges incurred in arranging for the transaction. It is Department practice to make an adjustment for differences in circumstances of sale for differences in credit costs, based on the fact that the period of time between the shipment and payment varies in respective markets. Expenses incurred in arranging for a letter of credit are not surrogates for this COS adjustment.

Furthermore, we disagree with SMP that the Department did verify the bank charges that were deducted from total interest expenses. In the Department's verification report, it states that "SMP deducted banking charges for this amount from interest. According to company officials, these charges were for bank charges for letters of credit. However, SMP had no documents to support these charges." (Department sales verification report for SMP at page 24). The total interest expense reported in SMP's worksheet in the verification exhibit *U.S. Credit Expenses* is taken directly from SCC's income statement for 1991. The deduction from this total interest amount for bank charges is not

supported in SCC's income statement. In fact, under SCC's *Operating Expense*, there is a category for "Bank Charges," and the amount reported does not match the amount SMP deducted from its total interest expenses reported in this same income statement. There is no explanation in the exhibit to clarify this difference, not is there any information in the verification report which verifies the total amount SMP deducted. SMP's claim that the difference between interest expenses reported in its response and those reported in SCC's income statement must be bank charges is not a valid one without supporting documents. The fact that Department verifiers examined invoices for interest expenses during 1991 for three different banks which equaled the amount reported in its response, does not account for or explain the difference between the amount reported in its income statement and its response to the Department's questionnaire. Therefore, we have recalculated SMP's U.S. interest rate without deducting the reported bank charges as outlined in the Department's sales verification report.

Comment 7: Petitioners claim that SMP failed to report transaction-specific data for foreign inland freight on U.S. sales, and that this should lead to the use of BIA. SMP provided averages for foreign inland freight claiming that it could not calculate transaction-specific freight costs. According to petitioners, however, Department verifiers found that certain freight charges could be traced to specific sales. Petitioners note that of the two entries selected for verification from SMP's transportation subledger, both entries for freight charges were directly traceable to individual sales. Petitioners contend that submission of average costs rather than transaction-specific charges is distorting and can artificially lower the dumping margin. As BIA, then, petitioners state that the Department should deduct the highest amount reported in SMP's data base for foreign inland freight on U.S. sales.

SMP maintains that it was not possible for it to calculate a transaction-specific freight charge. The fact that the Department verifiers showed SMP was able to calculate a sales-specific freight charge for two sales does not lead to the conclusion that it could do so for all sales. In fact, SMP states, the Department confirmed at verification that SMP could not have reported sales-specific inland freight charge for many sales because one of SMP's freight companies charges SMP a flat fee per month for deliveries—regardless of the product, quantity, or frequency. Given

this arrangement, SMP contends that there was no way to calculate a sales-specific freight charge for every sale. Therefore, SMP claims, it used the only alternative, which was to calculate an average and to apply that average to all sales.

Department Position

We agree with respondent that it could not calculate a sales-specific freight charge for every sale. However, petitioners are correct in their assertion that for many sales, SMP could have calculated a sales-specific freight charge, but only for home market sales, and not for U.S. sales. The narrative on pages 22 and 23 of SMP's sales verification report relates to both home market and U.S. inland freight expenses. This section of the report was mislabeled as "U.S. Charges and Adjustments", but the narrative clearly states that inland freight was calculated by "destination" for home market sales. The destinations referred to in the report are clearly home market destinations: Kyung Kee, Changwon, and Pusan. Therefore, it was not made clear in the report how SMP segregated its reporting of freight records in its responses. This is made clear, however, in its responses to the Department's questionnaires.

In the verification report, we show how certain freight charges in the home market could have been calculated on a sales-specific basis for certain sales. However, as stated in its April 19, 1992 response and as verified by the Department, SMP could not match individual U.S. sales to specific inland bulk shipments from the plant to the port. The Department confirmed this by examining SMP's freight records, which record only the quantity and freight paid for export sales. Therefore, SMP could not reasonably match U.S. sales to a bulk delivery to the port in Korea.

We examined SMP's total freight charges for every month during the POI reported in its response and checked these amounts to those reported in its transportation subledger, and we noted no discrepancies. We also noted that the subledger detail was broken out by destination, and by whether the shipments were domestic or export. The totals under category of exports to Pusan for each month matched those reported in its response. Therefore, we accept SMP's reported U.S. freight expenses on an average basis.

As for home market freight charges, we discovered at verification that SMP could have reported sales-specific charges for certain home market sales. We do not agree with respondent's statement in its April 9, 1992 response

that it calculated inland freight "using the most precise information available * * * or that "(f)reight cannot be derived on a shipment-by-shipment basis." As the verification report states, an allocation of freight charges to an individual transaction was possible for both transactions examined during verification.

However, as explained in the report, SMP could not calculate sales-specific charges for all home market sales because certain sales shipped to the Changwon area were shipped via a carrier which charged SMP a flat fee every month for deliveries, regardless of the product, quantity or frequency. The last line of the transportation subledger in the verification exhibit *Freight-1* shows this charge. Since we cannot determine using SMP's sales and transportation records how many home market sales were shipped via this particular carrier, we have accepted SMP's average home market freight charges as reported.

Comment 8: Petitioners argue that no offset should be made for SMP's home market indirect selling expenses because the data could not be verified. SMP reported these expenses based on total salaries, bonuses and severance benefits. According to petitioners, however, during verification SMP could not produce any financial statements to support its reported numbers. It is standard verification procedure to tie all expense claims to the financial statements. It is not enough to provide worksheets that explain how an expense is calculated. In the absence of verified data, petitioners contend that no offset should be allowed.

SMP claims that at verification it demonstrated that its offset ratio was derived by dividing total indirect selling expenses by total sales of pipe and tube. Although the verification report states that SMP did not produce financial statements supporting these selling expenses, this data was originally reviewed and verified by the Department at the cost verification. In fact, SMP argues, the total expenses shown in the cost verification report are directly traceable to SMP's 1991 audited financial statement. Given that these specific expense items are traceable to its audited financial statements, SMP submits that there is no basis to deny this offset claim.

Department Position

We agree with respondent. It is true that our verification report states that SMP could not produce any financial statements to support its reported salary amounts. However, SMP is correct that the total expenses reported in its sales

response were reviewed and verified by the Department at the cost verification. The amounts for salary, bonus, and benefits reported in its worksheet during the sales verification tie directly to SMP's 1991 audited financial statement. Since this document was reviewed by the Department's cost verifiers and is on the record, it does not constitute new information. The fact that the sales verifiers did not review the audited financial statement during verification of SMP's indirect offset amounts does not mean that the offset was not verified. The Department's cost verifier did, in fact, review this document. Therefore, we have accepted respondent's offset as reported.

Comment 9: Petitioners state that PSP's failure to report transaction-specific data for movement charges incurred before importation on ESP sales should result in the use of BIA. PSP has maintained that it could not trace the imported subject merchandise directly to a specific U.S. sale for ESP transactions, claiming that once the subject merchandise entered State Pipe and Supply Co.'s (State) inventory, all documentary links were "severed." Accordingly, PSP calculated average movement charges for those incurred before importation. Petitioners contend, however, that during verification the Department found that, in a number of instances, PSP can trace an ESP sale to a specific export. The Department's questionnaire states clearly its requirement that transaction-specific data is required if there is any way such data can be traced. According to petitioners, the verification report leaves no doubt that PSP did have the document trail to properly report its movement charges on a transaction-specific basis for a number of ESP sales, but it chose not to do so.

Petitioners claim that the Department requires transaction-specific reporting because it is well aware of the distortive effect that the averaging of U.S. expenses has on the dumping calculation. Because the Department does not know how many transactions PSP could have reported properly, all of PSP's ESP charges and adjustments that require linkage to shipment data are suspect. Therefore, petitioners contend that the Department should resort to BIA for these movement charges and use the highest reported value for each movement charge and deduct that amount from each observation.

PSP claims that it never asserted that it could not calculate sales-specific movement charges on any ESP sales, but rather that it was not possible for it to do so for all such sales. PSP states that it could not calculate sales-specific

charges for most ESP sales because the documentary links were severed when the pipe entered State's inventory. Furthermore, respondents claim, during verification the Department confirmed that the invoices for ESP sales do not record the mill test report (MTR) numbers or any other number linking these sales to specific exports by PSP. Also, PSP maintains that in the normal course of business State does not send the MTR to its customers unless it is specifically requested. PSP claims that such cases were rare in the POI and, accordingly, there is no factual basis for the Department to use BIA.

Department Position

We agree with respondent that its reporting of averages for U.S. ESP movement charges is reasonable. In the sales verification report for PSP, we stated in conclusion that the only reasonable way PSP could have traced an import directly to a specific U.S. sale was if an MTR was requested by the customer and sent along with the customer invoice. Since the MTR number is listed on PSP's commercial invoices, when an MTR is sent, PSP could trace the U.S. sale to the import. However, as stated in our report, there was "no consistent pattern to requests for MTRs; some invoices showed a request, and others did not." (Page 27, PSP sales verification report).

Therefore, we disagree with petitioners that respondent's averaging should lead to the use of BIA. Furthermore, we examined carefully the accuracy of PSP's average movement charges and have accepted them as reasonable. Where possible, PSP calculated two separate warehouse-specific averages for certain movement charges, depending upon whether the sale was shipped from PSP's U.S. subsidiary in Santa Fe Springs or Seattle. Therefore, we have made no changes to PSP's ESP movement charges, except where noted in our verification report.

Comment 10: Petitioners argue that PSP's sales of returned goods should be included in the Department's data base for the final analysis because exclusion of sales as outside the ordinary course of trade applies to FMV sales only. There is no statutory exclusion provided for U.S. sales not in the ordinary course of trade. During verification, petitioners state, the Department found that one of the sales was returned due to a shipping error; two other returned sales were originally reported by PSP as returned due to cancellation of projects, and then PSP reported that they were returned due to corrosion. Petitioners maintain

that if the Department continues to exclude discrete groups of sales by respondent, the Department will not ensure that all less-than-fair-value selling practices are offset. In the absence of statutory justification for exclusion of these U.S. sales, the Department should retain these U.S. sales in its final analysis.

PSP contends that the Department should exclude PSP's returned goods sales because the Department verified that they were sales originally made outside the POI and that they involved aberrant sales. PSP maintains that the Department verified that the sales involved defective corrosion-damaged pipe and were originally made outside the POI.

Respondent contends that this has been the Department's consistent practice. In a recent determination, *PET Film From Japan*, 56 FR 16300 (1991), the Department stated that the respondent had established that the initial sale of the merchandise was made prior to the POI, and consistent with its treatment in similar situations, agreed that the sale occurred outside the POI. Furthermore, respondents claim that the Department excluded PSP's returned goods sales in the *Circular Welded Pipe from Korea* investigation, agreeing with respondents that the small number of sales should be excluded because of the aberrant nature of these sales. Therefore, PSP urges the Department to reject petitioners' speculation and to exclude these sales.

Department Position

We agree with respondents. The Department is not required to examine all sales made during the POI. 19 CFR 353.42(b). Therefore, we have excluded from our analysis two returned goods sales made during the POI. The third sale was excluded because the initial sale of the merchandise was made prior to the POI, which is consistent with *Pet Film From Japan*.

Comment 11: Petitioners note that the Department's discovery of errors in PSP's foreign brokerage and handling expenses should lead to the use of BIA. Petitioners claimed that during verification Department verifiers noted that the handling charge for one sale was incorrect. The reported charge was an understatement. Given that the one sale reviewed did not verify, and that the understatement of the charge was considerable, petitioners maintain that there is a distinct possibility that a number of PSP's reported handling charges are understated, and that these understatements could have a significant impact on the margin calculations.

Petitioners further contend that where the only brokerage and handling charge examined could not be verified, the Department cannot assume that all other data are acceptable. Therefore, the Department should select as BIA the highest reported value in the database for foreign brokerage and handling and apply this value to all sales.

Respondents claim that the errors disclosed at verification were insignificant and do not warrant the use of punitive BIA, and that it is absurd to assert that the discovery of an isolated error in PSP's favor justifies the use of the highest reported value in the database for all U.S. sales. Respondents maintain that foreign brokerage and handling charges were correctly calculated for all other sample sales examined.

Department Position

We disagree with petitioners that this error in one of PSP's reported brokerage charges should lead to the use of BIA. Through selective examination and sampling of sales at verification, the information used to calculate brokerage charges was successfully verified by the Department. As stated in the ESP Pre-Selected and Surprise Sales section of the sales verification report, we examined four ESP sales and listed all corrections or changes on page nine, stating that no other discrepancies, except those listed, were noted. There are no corrections for reported brokerage charges for these four sales. Therefore, it is not true that we verified only one brokerage charge. Given this, we have accepted PSP's reported brokerage charges, except where corrected in our verification report.

Comment 12: Petitioners claim that the Department should revise its calculation of PSP's inventory carrying costs. Petitioners state that PSP retains title to the merchandise until it reaches the U.S. dock, where Pusan Pipe America (PPA) assumes title. Furthermore, the Department's sales verification report states that PPA is the importer of record for U.S. sales. Therefore, petitioners maintain that PPA assumes title of the subject merchandise upon importation into the United States. Therefore, the Department should apply PSP's interest for the period between shipment from Korea to arrival at the U.S. dock.

Respondents maintain that they correctly calculated inventory carrying expenses using PPA's short-term interest rate because PPA maintains title to the merchandise while it is on the water. When the merchandise is ready for shipment, PPA opens a letter of credit in PSP's favor. PSP then obtains payment by presenting shipping documents to the

U.S. issuing bank's correspondent bank in Korea, which then forwards the documents to the issuing bank. Respondents claim that possession of these shipping documents confers title. Furthermore, the commercial invoices issued on export of pipe from Korea state that the shipment is "for Account & Risk of" PPA. PPA, therefore, is the entity that is bearing the cost of holding that inventory. Accordingly, it is PPA's interest rate, not PSP's, that should be used in imputing inventory carrying expenses on these sales.

Department Position

We agree with respondents that in this case, possession of shipping documents which state that shipment is "for Account & Risk of" PPA confers title. Therefore, we disagree with petitioners that we should use PSP's interest rate for the period from Korea to the U.S. port, and have accepted PSP's reported inventory carrying costs.

Comment 13: Petitioners contend that PSP's failure to provide the Department with all of its published financial records has deprived the Department of information relevant to this case. In its questionnaire to PSP, the Department requested that respondent submit all of its financial statements and reports. PSP, however, has failed to respond to this request even though the documents were available. Specifically, PSP's annual report for 1991 was not submitted to the Department. For example, petitioners claim that information in this report sets forth prices of raw materials purchased by PSP during the POI. These prices distinguish between imported and domestic hot-rolled coil. Had the Department received this document prior to verification, it would have been in a better position to verify PSP's claims regarding raw material prices. Petitioners urge the Department to consider the recalcitrance of PSP in failing to provide requested and relevant data that are publicly available over the course of this case, since it is justifiable to conclude that this material was withheld by PSP due to concern by PSP that its submission would increase its margin of dumping.

Respondents maintain that petitioners arguments are misleading and involve new information. First, respondents claim, the report in question was not issued until after the sales and cost verifications were completed. In addition, the report did not contain additional information that had not already been submitted to the Department or inspected by the Department at verification. PSP

submitted its audited financial statements covering the POI in advance of verification, and since these documents are audited, respondents maintain that they are the most authoritative financial reports available. And finally, respondents point out that during verification, the Department reviewed and verified virtually all the key financial source documents relied upon by PSP to put together its responses.

Department Position

We disagree with petitioners that PSP's failure to provide the Department with its annual report for 1991 has deprived the Department of information relevant to this case. As respondent states, this report was not issued until after the sales and cost verifications were completed. Therefore, because it is dated August 14, 1991, it would be considered new information and would not be accepted by the Department. Furthermore, the Department verifiers reviewed all key financial documents and reports during the sales and cost verifications. Therefore, there is no basis to conclude that PSP was withholding information in order to reduce its dumping margin.

Comment 14: Respondents state that the Department should use SMP's alternative matches of similar merchandise before turning to constructed value. According to respondents, section 773(a) of the dumping statute expresses a general preference for basing dumping determinations on price-to-price comparisons, and therefore, the Department has the discretion to allow the use of alternative matches. Furthermore, the Department has exercised this discretion under the law in the past. See *Tapered Roller Bearings from Japan*, 57 FR 4690 (1992).

Respondents further claim that in its recent final determination in the *Standard Pipe* investigation, the Department assumed that it could use alternative home market matches of similar merchandise prior to resorting to CV. However, respondents claim, the Department declined to use alternative matches because of special circumstances. Because of the massive number and variety of home market models of subject merchandise in that case, the Department agreed to allow respondents to report COP and CV for a limited number of home market models. Under these circumstances, therefore, the Department declined to use alternative matches. Respondents maintain that there are no similar extraordinary circumstances in this investigation precluding the Department

from using alternative matches because SMP and PSP submitted a complete listing of COP and CV for all home market products sold during the POI. Given these circumstances, respondents request that alternative matches be used for the dumping analysis before the Department resorts to CV.

Petitioners maintain that the Department should resort to CV, not alternative similar sales, when there are insufficient above-cost sales of a particular product, stating that section 773(b) of the Act instructs the Department to use CV as the basis of FMV when sales are made below cost. As the Department recognized in the recent final results of its administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, the statute does not instruct the Department to use the next most similar merchandise, but rather requires the use of CV. In this proceeding, the Department first determined that such or similar merchandise to be used in comparison to the merchandise sold in the United States, and then tested sales of that particular merchandise to determine whether they are below cost.

Furthermore, petitioners argue, the reason the Department cited for rejecting respondents' proposal in the *Standard Pipe from Korea* case was the statutory directive that the Department resort to CV following the search for most similar merchandise under sections 773(b) and 771(16) of the Act. The Department's reference to the facts of that case follow the statement "even assuming, *arguendo*, that the respondents are correct in asserting that the Department should use similar home market product matches before resorting to CV," the data of record did not permit such an alternative.

Moreover, petitioners claim, the data of record in this case is too limited to permit the Department to resort to alternative model matches as respondents propose because SMP has not submitted difmer data that can be used by the Department. (See *Comment 4*). Under these circumstances, the Department should not adopt SMP's proposal to use comparisons of alternative, less similar merchandise in lieu of CV. This would only increase the need for reliance on difmer data that is suspect.

Department Position

We agree with petitioners and have based FMV on constructed value for any model match where more than 90 percent of its home market sales were found to be below cost. This approach is

consistent with sections 773(b) and 771(16) of the Act.

Prior to determining FMV under 773(a), the Department must first select the most similar merchandise. Section 771(16) of the Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Section 771(16) also expresses a preference for the use of identical over similar merchandise, stating categorically that such or similar merchandise is the merchandise that falls into the first hierarchical category in which comparisons can be made. The cost test is not conducted until after the most similar model match is found under section 771(16).

Section 771(16) requires us to descend through successive levels of the hierarchy until sales of such or similar merchandise are found. However, it does not condition the determination of such or similar on any basis other than similarity of the merchandise. In particular, section 771(16) directs us only to "the first of the following categories * * *" and not to the next category when the first match is below cost. If this were not the case, the cost test would inappropriately become part of the basis for determining what constitutes such or similar merchandise, which is clearly not the purpose of the cost test. Because section 771(16) specifies the determination of such or similar merchandise on the similarity of the merchandise only and not on whether the most similar model is above cost, and section 773(b) directs us to the use of CV when the most similar model is sold below cost, we based FMV on CV when the most similar home market product match was found to be below COP.

Cost Comments

PSP

Comment 1: PSP argues that its submitted material costs, which were based on its weighted average purchase price during the POI, differed only slightly from the weighted average value of material requisitioned during the POI. Thus, the slight nature of these differences demonstrate that PSP's submitted costs are reasonable, and should be accepted without adjustment.

Petitioners argue that in order to ensure the accuracy of its final calculations, the Department should adjust all material costs to reflect PSP's requisition value of materials consumed during the POI.

Department's Position

The Department agrees with petitioners. Valuing materials based on PSP's purchase price during the POI does not take into account the cost of materials in inventory at the beginning and end of the POI. Therefore, the Department adjusted PSP's submitted material costs to reflect its monthly weighted average value of materials requisitioned from inventory during the POI.

Comment 2: PSP claims that the alleged overstatement of production quantity as used to allocate fabrication costs, arose from the inclusion of partially fabricated pre-welded pipe. Additionally, PSP claims that the effect of inclusion of the partially fabricated pre-welded pipe in the production quantity as used to allocate fabrication costs is *de minimis*. Therefore, PSP argues that the Department should accept PSP's fabrication costs as submitted.

Department's Position

The Department disagrees with PSP. At verification, PSP was unable to explain the reason for the overstatement of production quantity as used to allocate fabrication costs. PSP's claim that the overstatement related to the inclusion of partially fabricated pre-welded pipe was never discussed, and there is no evidence on the record to support that claim.

Additionally, the effect of the overstatement of production quantity as used to allocate fabrication costs is not considered insignificant. Therefore, the Department adjusted fabrication costs to account for the overstatement of production quantity.

Comment 3: PSP argues that the conversion factors used to convert costs from an actual weight basis to a theoretical weight basis are correct. PSP insists that since the actual weights used in deriving the conversion factor are the same as the actual weights used in its normal production and accounting records, application of the factor to the actual cost for each product results in an accurate cost on a theoretical basis.

Petitioners argue that PSP's calculated conversion factors used to convert submitted costs from an actual weight basis to a theoretical weight basis cannot be relied upon because the actual weight component of this factor is based on the thickness of input coil rather than the thickness of the output finished pipe. Petitioners claim that as a result of the manufacturing operation, the resulting gauge of the pipe will be different from the gauge of the coil.

Department's Position

We agree with respondents. The methods applied by PSP to calculate the actual weight of the pipe as used in the submitted conversion factor calculations are the same methods they apply in their internal bookkeeping systems. Absent convincing evidence that the calculating methodology biases the dumping calculation, we may not disregard PSP's approach.

SMP

Comment 1: SMP argues that the conversion factors used to convert costs from an actual weight basis to a theoretical weight basis are correct. SMP insists that since the actual weights used in deriving the conversion factor are the same as the actual weights used in its normal production and accounting records, application of the factor to the actual cost for each product results in an accurate cost on a theoretical basis.

Petitioners argue that SMP's calculated conversion factors used to convert submitted costs from an actual weight basis to a theoretical weight basis cannot be relied upon because the actual weight component of this factor is based on the thickness of input coil rather than the thickness of the output finished pipe. Petitioners claim that as a result of the manufacturing operation, the resulting gauge of the pipe will be different from the gauge of the coil.

Department's Position

The methods applied by SMP to calculate the actual weight of the pipe as used in the submitted conversion factor calculations are the same methods they apply in their internal bookkeeping systems. Absent convincing evidence that the calculation methodology biases the dumping calculation, we may not disregard SMP's approach.

Comment 2: SMP argues that a portion of its gain on the sale of a forging plant was related to the production of WSSP. Therefore, the Department should continue to include this gain in SMP's G&A expense calculation.

Petitioners contend that SMP's sale of its forging plant was a real estate transaction. Thus, the gain realized on this sale should be classified as other income, and not be permitted to be used as an offset to G&A expenses. Additionally, petitioners assert that even if the storage yard at the forging plant was considered to be a production related asset, there is no evidence on the record that only coil used in the production of subject merchandise was stored there.

Department's Position

The Department disagrees with SMP. The Department normally includes in G&A expense, routine gains and losses on the disposition of fixed assets as incurred in the ordinary course of business. However, the gain SMP is claiming as an offset to G&A expenses is related to the sale of a significant manufacturing plant and adjacent land area. This sales transaction is not a routine disposition of fixed assets. Therefore, the Department disallowed SMP's inclusion of the gain on sale of its forging plant and adjacent land area for purposes of computing G&A expense.

Comment 3: SMP argues that based on the appraisal it obtained from real estate professionals in the Changwon area, its rental payments to SSC for the stainless steel facility were at arms-length prices.

Petitioners argue that the appraisal provided by SMP only establishes that SMP only establishes that SMP paid rent that falls within the appraisal range. It does not establish whether SMP was in fact receiving preferential treatment in its rental costs from the related party.

Petitioners urge the Department to ignore the submitted transfer rental prices, and instead use the highest market rent reported by the Korean appraiser as BIA.

Department's Position

The Department agrees with SMP. The amount of rent paid by SMP to its related party is within the appraised fair market value range for rents in the Changwon Industrial Area. Absent evidence of preferential treatment, the Department is unable to disregard SMP's response.

Comment 4: SMP claims that during verification, it was noted that SMP inadvertently double-counted advertising, business promotion, transportation, bad debt and export expenses. Therefore, the Department should delete these items from SMP's SG&A expense in order not to double-count these expenses which were previously reported in the price submission.

Department's Position

The Department disagrees with SMP. At verification, SMP claimed that its submitted SG&A calculation for SSC, not SMP, should be exclusive of the above items. Additionally, the concern at verification was that SSC incurs no selling expenses on sales to SMP, not that these expenses were reported elsewhere. Therefore, no adjustment was made to SMP's SG&A expense.

Comment 5: SMP argues that its G&A expense calculation should be exclusive of amortization of deferred costs. Under Korean Generally Accepted Accounting Principles ("GAAP"), expenses incurred relating to research and development, and bond and stock issuance, are capitalized and amortized over a period of three to five years, whereas under U.S. GAAP, these costs are expended in the year incurred. SMP contends that by capitalizing and amortizing these costs, current and future years' financial results are distorted.

Petitioner argues that U.S. GAAP does permit capitalization and amortization of research and development and issuance costs.

Department's Position

The Department disagrees with SMP. In general, the Department adheres to an individual firm's recording of costs in accordance with GAAP of its home country, if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. Relating to the steel pipe industry, the Department is satisfied that research and development and issuance costs incurred in a particular year, benefit future years. Therefore, the Department adhered to Korean GAAP, and included amortization of deferred charges, as reported on SMP's financial statements, in our calculation of G&A expense.

Comment 6: Petitioners argue that the Department should adjust for SMP's overstatement of its scrap recovery amount, as identified at verification.

SMP claims that it understated the price it received for scrap during the POI, and the effect of this understatement offsets the overstatement of its scrap recovery rate.

Department's Position

SMP's overstatement of its scrap recovery rate has an insignificant effect on its submitted costs. Therefore, the Department made no adjustment to SMP's submitted scrap recovery amount for the final calculations.

Comment 7: Petitioners argue that SMP's allocation of indirect overhead costs on the basis of number of workers or depreciation should be rejected.

SMP argues that its submitted indirect overhead costs were allocated to direct cost centers using the same methodology used in its normal course of business, and therefore no adjustment is warranted.

Department's Position

The Department agrees with SMP. At verification, the Department determined that SMP's allocation methodology for

indirect overhead costs was reasonable and in accordance with the company's books and records. Therefore, no adjustment was made to indirect overhead for purposes of the final determination.

Comment 8: SMP argues that there is no reasonable basis for revising SSC's material cost calculations. SMP claims that the material costs provided in its COP/CV submission were developed based on grade and wall thickness. The Department's analysis ignored cost by thickness, and used SSC's POI cost of manufacture by grade only.

Department's Position

The Department disagrees with SMP. Contrary to SMP's argument that SSC submitted cold-rolled steel raw material costs by grade and wall thickness, verification Exhibit 7, page 2, clearly illustrates that SSC's submitted cold-rolled steel raw material costs were by grade only, i.e., all wall thicknesses within a specific grade have the same material costs. Therefore, SMP's explanation that the difference between the submitted material costs and material costs recorded in SSC's monthly cost of sales statements, was due to different costs for different wall thicknesses, has no merit.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of certain welded stainless steel pipe that are entered, or withdrawn from warehouse, for consumption on or after June 22, 1992, the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer manufacturer/exporter	Weighted-average margin percentage
Sammi Metal Products Co., Ltd.	7.75
Pusan Steel Pipe Co., Ltd.	2.55
All Others	6.83

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: November 4, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

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[A-583-815]

Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0116.

FINAL DETERMINATION: We determine that certain welded stainless steel pipes (WSSP) from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination and postponement of the final determination on June 15, 1992 (57 FR 27735, June 22, 1992), the following events have occurred. On June 30, 1992, petitioners alleged a significant clerical error in the calculation of Jaung Yuann Enterprise Co. Ltd.'s (JYE's) preliminary margin.

On July 21, 1992, the Department issued the amended preliminary determination correcting the ministerial error in the calculation of JYE's estimated preliminary dumping margin. (57 FR 33492, July 29, 1992).

On June 25, 1991, Ta Chen Stainless Pipe Co., Ltd., (Ta Chen) submitted tapes for responses to all sections of the

questionnaire containing corrections discovered in preparing for verification. JYE did the same on June 30, 1992, and Yeun Chyang Industrial Co., Ltd. (YCI) on August 3, 1992. Petitioners submitted preverification comments regarding Chang Tieh Industry Co., Ltd. (CTI) and JYE on July 2, 1992. Petitioners submitted pre-verification comments regarding YCI and Ta Chen on July 24, 1992.

We conducted verification of the sales and cost questionnaire responses for all respondents (CTI, JYE, Ta Chen and YCI) between July 10 and August 12, 1992. In addition, we verified the exporter's sales price (ESP) responses for Ta Chen in California on August 15, 1992.

On June 29, 1992, JYE and CTI requested a public hearing. On July 1, 1992, the petitioners in this investigation, Avesta Sandvik Tube, Inc., Bristol Metals, Damascus Tubular Products, Trent Tube Division of the Crucible Materials Corporation, and the United Steelworkers of America, requested a public hearing. On July 2, 1992, Ta Chen also requested a public hearing. On August 21, 1992, YCI concurred in the requests for a hearing.

Petitioners and respondents filed case briefs on September 25, 1992, and rebuttal briefs on October 1, 1992. A public hearing was held on October 2, 1992.

On July 1, 1992, petitioners alleged that CTI was making sales in the United States, which they described as inconsistent with commercial reality and unrepresentative of the U.S. market. They maintained that CTI's U.S. prices had been set "artificially" high by means of collusion with a U.S. importer, with an intent to begin dumping after receiving no margin and being excluded from any antidumping duty order issued in the investigation. On July 2, 1992, in their pre-verification comments, petitioners describe their allegations in greater detail.

On July 14, 1992, petitioners submitted to the Department, at its request, an affidavit in support of their allegations of July 1, 1992. On September 2, 1992, petitioners met with Francis J. Sailer, Deputy Assistant Secretary for Investigations. As noted in a September 15, 1992, memorandum of that meeting, Mr. Sailer informed petitioners that the Department would grant anonymity to petitioners sources supporting the allegations. On September 10, 1992, petitioners submitted to the Department a second affidavit in support of their allegations.

On September 11, 1992, CTI submitted arguments that petitioners raised these allegations against its U.S. sales

practices in an untimely manner, and that therefore, the July 14, 1992, and September 10, 1992, affidavits should be stricken from the record. On September 15, 1992, petitioners submitted arguments asserting that the July 14, 1992, and September 10, 1992, affidavits were timely filed with the Department and should not be stricken from the record. Petitioners also stated in the submission that they will not release the September 10, 1992, affidavit under administrative protective order (APO).

On September 21, 1992, petitioners submitted a third affidavit from another affiant who supported their allegations against CTI. They again did not agree to release a version of the affidavit under APO. On September 22, 1992, the Department informed petitioners that unless they serve APO versions of their affidavits, these would be stricken from the record. On September 23, 1992, petitioners withdrew from the record their September 10, 1992 and September 21, 1992, submissions. In their stead, petitioners submitted new public and proprietary versions of the affidavits in question. Petitioners did not agree to release the proprietary versions of the affidavits under APO. On October 8, 1992, the Department requested that petitioners submit versions of the affidavits which could be released under APO, or in the alternative, to demonstrate that there are clear and compelling reasons not to disclose this information. On October 14, 1992, petitioners submitted their arguments for non-disclosure.

On September 24, 1992, the Department sent a letter to CTI requesting information concerning its sales practices during the POI. On October 8, 1992, CTI responded, claiming that the allegations were unsubstantiated and untrue. On September 25, and October 6, 1992, the Department sent letters to the U.S. importer of record and requested information concerning its role in the sale of CTI's merchandise. The importer responded with a letter dated October 13, 1992, stating that the allegations against it were unsubstantiated and untrue. Petitioners commented on the responses on October 19, 1992. On October 26, 1992, petitioners further disputed these responses from CTI and its U.S. importer/customer.

On November 2, 1992, the Department met with petitioners to clarify confusion regarding the granting of anonymity of the sources of the information contained in the affidavits, and to clarify what information would be released under APO concerning their September 10 and 21, 1992 affidavits. A request for APO versions of September 10 and 21, 1992

affidavits was renewed. On November 3, 1992, petitioners resubmitted to the Department modified versions of their September 10 and 21, 1992, affidavits in a form releasable under APO.

On November 2, 1992, CTI met with Department officials to discuss the certification requirement imposed by the Department as a condition of exclusion of CTI from the antidumping duty order. (See Exclusion of CTI section). On November 3, 1992, CTI responded to the November 2, 1992, meeting with Department officials concerning certification on U.S. sales prices. CTI states that it is unable to comply with the Department's company certification exclusion requirement, at this time, because it has not had a full and fair opportunity to consider the substantive aspects of the certification. On November 4, 1992, CTI claims that petitioners' November 3, 1992, APO affidavit submissions were untimely and should be stricken from the record.

Scope of Investigation

The merchandise subject to this investigation is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the investigation also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060, and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1991, through November 30, 1991.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Specification/alloy; (2) nominal pipe size; (3) surface finish or coating; (4) wall thickness, and (5) end finish. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

For CTI, we made sales comparisons on the basis of theoretical weight, the weight basis on which respondents reported U.S. sales. Ta Chen had stated that its home market sales quantities were reported on the basis of actual weights, and the U.S. sales on the basis of standard actual weights, which are derived by entering the actual pipe thickness into a mathematical formula. At verification, we discovered that home market quantity was based on actual weights while some U.S. sales were based on actual weights and others on standard actual weights.

Fair Value Comparisons

Because JYE and YCI failed verification, we based the antidumping duty margin for those companies on the best information available (BIA). As BIA, we used the highest margin calculated in the petition, 31.9 percent, *ad valorem*. (See Best Information Available section and Interested Party Comments section, below.) To determine whether Ta Chen and CTI made sales of WSSP from Taiwan to the United States at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" section of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

A. CTI

1. As BIA, we applied the highest ocean freight charge reported on a U.S. sale to all sales, because these charges could not be verified. (See Interested Party Comments section.)

B. Ta Chen

1. We recalculated an average warranty expense to account for the verified U.S. export expenses that Ta Chen incurred on shipments of damaged merchandise discovered after importation to the United States.

2. We deducted discounts which had not previously been reported.

3. For ESP based on f.o.b. U.S. warehouse and delivered prices, we made deductions, where appropriate, for re-packing charges incurred after importation of the goods into the United States.

4. We recalculated ESP credit expenses using the verified U.S. interest rate and increased the credit period by 2 days, as BIA, for incorrectly reported dates of payment. We recalculated U.S. inventory carrying costs using the verified home market interest rate for the period of storage in Taiwan and the verified U.S. interest rate for the period between shipment from the factory and shipment from U.S. inventory to the final customer. We are no longer imputing indirect selling expenses incurred in the home market on behalf of ESP sales. (See comment 9).

5. We adjusted USP to account for import duties on raw materials which were exempted for sales to the United States.

6. We recalculated the average POI expense for Marine Insurance, U.S. duties, and Taiwan Export fees to account for a decrease in the volume of sales over which the expenses were allocated.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exceptions:

A. CTI

1. As BIA, we disallowed the claim for a deduction for imputed home market credit expenses, home market inland freight and home market packing, because these could not be verified. (See Interested Party Comments section.)

B. Ta Chen

1. We conducted an arms-length test for sales to a related customer by comparing them, where possible, to sales to unrelated customers of comparable models. Based on these comparisons, we found that the average price per unit did not constitute an artificially low transfer price. Therefore, we only excluded sales of three models for which there were no comparable sales to unrelated customers.

2. We have excluded from the home market sales database those non-ASTM pipe sales which were not used in matching to U.S. sales.

3. For both home market price and constructed value (CV) comparisons to purchase price sales, we made circumstance-of-sale adjustments for recalculated credit expenses, recalculated warranty expenses, bank handling charges, and commissions, in accordance with 19 CFR 353.56. We recalculated home market credit expenses using the verified home market interest rate. We recalculated purchase price credit expenses using the verified home market interest rate and increased the credit period by a total of 5 days as a BIA adjustment for incorrectly reported dates of shipment and payment. We recalculated an average warranty expense to account for the verified export expenses which Ta Chen incurred on shipments of damaged merchandise discovered after importation to the United States.

4. For both home market price and CV comparisons to ESP sales, we made the following deductions in accordance with 19 CFR 353.56. We deducted from FMV the weighted-average home market indirect selling expenses, including recalculated inventory carrying costs, up to the amount of indirect selling expenses incurred on U.S. sales.

Cost of Production and Constructed Value

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether CTI and Ta Chen had home market sales that were made at less than their cost of production (COP). For Ta Chen, CV was used for the certain comparisons to U.S.C. prices.

If over 90 percent of a respondent's sales were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales were at prices above the COP, we disregarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales and calculated FMV based on CV. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities and were over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials,

fabrication, general expenses, and packing. The submitted COP data was relied upon, except in the following instances where the costs were not appropriately quantified or valued:

A. CTI

1. Interest expenses were recalculated without the expenses incurred by the related party because the parties did not meet the requirements of consolidation.

2. We determined at verification that CTI incorrectly calculated its production yield losses and have corrected COP and CV accordingly.

3. We have determined that CTI understated its labor cost by its exclusion of year-end bonuses and have corrected COP and CV accordingly.

4. We determined at verification that CTI understated its indirect labor costs and have corrected indirect labor in COP and CV accordingly.

5. We have determined that CTI failed to demonstrate that its cost of materials should be offset by scrap revenue, and have removed the scrap revenue from reported materials cost used in our final determination.

B. Ta Chen

1. For COP and CV, G&A expenses were revised to include all general expenses which had not been specifically included elsewhere as selling expenses or movement charges.

2. We have determined that it is correct to include in Ta Chen's material cost the purchase of semi-finished pipe. Therefore, we used Ta Chen's November 1991 COP/CV data.

3. We have determined to use a single weighted-average COP and CV figure for each product model for the entire POI. We are basing the calculation of COP on the costs which were incurred during the POI, weighted by the quantity of home market sales during the POI, based on the date of sale for the prices to which they will be compared. We are basing the calculation of CV on the costs which were incurred during the POI, weighted by the quantity of sales during the POI, based on the date of sale for the U.S. prices to which they will be compared. This was necessary to convert six monthly COP and CV values for each product model into single figures per product model for the entire POI.

5. We have determined that COP must be increased by actual import duties on raw materials for home market sales and that when CV is used as FMV, CV must be increased by the average import duty on raw materials for home market sales.

To calculate CV, in addition to the cost of materials and fabrication, we

used the actual general expenses in accordance with section 773(e)(1)(B)(i) of the Act, because they exceeded the statutory minimum of ten percent. For profit in CV, we used eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Best Information Available

We have determined that the questionnaire responses of JYE and YCI provide an adequate basis for estimating dumping margins. The Department has determined that, for the information we examined, or attempted to examine, at verification, the misreporting and inaccuracies were both material and pervasive. In addition, the lack of preparation on the part of both respondents was significant enough to be determined uncooperative behavior on the part of the respondents. The problems encountered in attempting to verify these respondents' information are detailed in the company-specific Interested Party Comments section, below.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents found to be uncooperative in an investigation.

The number and severity of problems encountered in both the sales and cost verifications for both companies have been determined, by the Department, to constitute uncooperative behavior. Therefore, in accordance with Department practice, we are applying

the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. Since the highest margin calculated is that for Ta Chen, 3.51 percent, we are applying the highest margin alleged in the petition, 31.9 percent *ad valorem*, as BIA for JYE and YCI.

Critical Circumstances

Petitioners allege that "critical circumstances" exist, within the meaning of section 735(a)(3) of the Act, with respect to imports of WSSP from Taiwan. Section 733(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class of kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

There are no prior dumping cases involving the subject merchandise which would establish a history of dumping. It is our standard price to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such magnitude that the importer should realize that dumping exists with regard to the subject merchandise. It has been the Department's practice to consider estimated margins of 25 percent or greater on sales to unrelated parties and estimated margins of 15 percent or greater on sales to related parties as sufficient proof to impute knowledge of dumping. Since for Ta Chen and CTI the weighted-average dumping margins fall below these percentages, critical circumstances do not exist with respect to Ta Chen and CTI. Accordingly, it is not necessary to determine if massive imports exist or those importers.

For JYE and YCI, since the BIA dumping margins are greater than 25 percent, the Department imputes that there was knowledge of dumping. Because their respective shipment data could not be verified, the Department determines as BIA that there were massive imports over a relatively short period of time. Therefore, based on BIA, the Department determines that critical circumstances do exist with respect to JYE and YCI. We have not included

companies covered by the "All Other" rate in our affirmative critical circumstances determination because we determined that critical circumstances only exist for those two firms whose margins are based on BIA.

Exclusion of CTI

Normally, the Department will exclude from the application of an antidumping order, a producer found to have a zero weighted average dumping margin during the POI. 19 CFR 353.21(c). The Department's final determination resulted in a zero dumping margin for CTI. However, petitioners have submitted evidence indicating that CTI's sales were contrived for purposes of the Department's investigation. Specifically, petitioners submitted statements by several affiants who assert that they were told by officials of CTI's U.S. customer that CTI sold small quantities of WSSP during the POI at artificially high prices with the intention of making sales of LTFV after being excluded from the order. In view of the fact that CTI did not sell in the U.S. market prior to the POI, petitioners' evidence raises significant concerns about potential evasions, by CTI, of the antidumping order (if one is issued in this case).

To address these concerns, the Department is requiring CTI to provide, as a condition for its exclusion from the application of the order, a certification similar to those required under §§ 353.14 and 353.25(b) of the Department's regulations. Specifically, CTI must certify that it: (1) Did not sell subject merchandise to the United States at less than its foreign market value during the POI; (2) will not sell the subject merchandise to the United States at less than its foreign market value in the future; and, (3) agrees to the immediate application of the order to its imports of subject merchandise, if the Department determines at any time during the existence of the antidumping order that CTI has sold or is likely to sell the subject merchandise to the United States at less than its foreign market value.

To afford CTI sufficient time to review and consider the requested certification, the Department will accept CTI's certification any time up to the date of issuance of an antidumping order in this case. If CTI fails to provide the required certification, CTI's imports of the subject merchandise will be subject to the application of the order, and the Department will order the suspension of liquidation with a cash deposit rate of zero.

Interested Party Comments

General

Comment 1: Petitioners maintain that the respondents have not proven that they use imported steel coil in the production of the WSSP sold in the home market, and that the duty-drawback adjustment claimed is therefore unwarranted.

CTI claims that the provisions governing the duty drawback adjustment, contrary to petitioners' arguments, are not dependent upon a respondent showing that the exported goods were made from raw material on which a duty was paid, nor is it dependent on a showing that the domestic-market goods were made from duty-paid raw materials. CTI maintains that it has satisfied the two stipulations of the Department's customary duty-drawback test, namely, it has shown that:

1. The import duty and rebate are directly linked to, and dependent upon, one another; and

2. The company claiming the adjustment can demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the finished product.

CTI traces this two-part test to the Department's Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change, 26-27 (November 1985), and notes that it was specifically cited with approval in the ruling *Far East Machinery Co., Ltd. v. United States*, 12 CIT 428, 431, 688 F. Supp. 610 (1988), and in the recent Final Determination of Sales at LTFV: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 57 FR 42942, 42946 (September 17, 1992).

Ta Chen maintains that the Department verified that it paid the Taiwan import duty for those sales for which it was reported and that the Department reviewed the records at verification which demonstrated that the pipe subject to the duties paid were made from imported steel coil.

DOC Position

We agree with respondents. Section 772(d)(1)(B) of the Act requires an upward adjustment to U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." Based on the legislative history of the antidumping law, the Court of International Trade (CIT) has interpreted the purpose of this adjustment as follows:

[t]o prevent dumping margins from arising because the exporting country rebates import duties and taxes for raw materials used in exported merchandise, the antidumping law provides for an offsetting adjustment in the calculation of United States price.

Far East Machinery Co., Ltd. v. United States, 12 C.I.T. 428, 430 (1988), citing, *Carlisle Tire & Rubber Co. v. United States*, 10 C.I.T. 301 (1986), and S. Rep. No. 16, 87th Cong., 1st Sess. 12 (1921). Furthermore, an adjustment for duty drawback is required under the General Agreement on Tariffs and Trade (GATT), art. VI, para. 4.

In determining whether a duty drawback adjustment is appropriate, the Department applies a two-prong test establishing that: (1) The import duty and rebate are directly linked to, and dependent upon, one another; (2) that the company claiming the adjustment can demonstrate that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. The CIT has consistently found this test to be reasonable. *Far East Machinery Co., Ltd. v. United States*, 12 C.I.T. 972 (1988) (*Far East Machinery*); *Carlisle Tire & Rubber Co. v. United States*, 11 C.I.T. 168 (1987) (*Carlisle Tire*).

Based on information in the responses to the Department's questionnaire and on findings at verification, the respondents' methodologies for calculating a duty drawback adjustment meet both elements of this test. With respect to the first prong of the test, the CIT has stated that duty drawback "may give rise to an adjustment to United States price provided import duties are actually paid and rebated, and there is a sufficient link between the cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)." *Far East Machinery*, 12 C.I.T. at 976, quoting *Huffy Corp. v. United States*, 10 C.I.T. 214 (1986). There is no dispute that the first prong of the test has been met in this case. At verification, we confirmed that duties on imported raw materials were, in fact, paid and rebated upon export of the manufactured product. Accordingly, respondents were able to establish the necessary link between duties imposed and rebated. We note that the finding in this case is consistent with prior cases involving imports from Taiwan (See, *Far East Machinery*).

The second prong of the test encompasses the principle of drawback substitution. With respect to this portion of the test, the CIT has agreed that "there is no requirement that specific input be traced from importation through exportation before allowing

drawback on duties paid." *Far East Machinery*, 12 C.I.T. at 975. Therefore, like governments applying duty drawback programs, the Department does not attempt to determine whether raw materials used in producing the exported merchandise actually came from imported stock, but rather assesses whether there were sufficient imports of relevant raw materials to account for the duty drawback received on the exports of the manufactured product. The Department verified respondents' drawback applications, which documented sufficient imports of raw material to account for the drawback claimed. In each drawback application reviewed by the Department, it was shown on import permits that sufficient imports of appropriate coils existed for the claimed exported amounts of finished pipe. Therefore, CTI has met the second requirement for a drawback adjustment.

Other claims by petitioners do not speak to the test traditionally applied by the Department, but rather seek to impose additional requirements for duty drawback claims, which are not required by the statute, the regulations, or past Department practice. There is no basis for petitioners' argument that the Department should not make a duty drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials. The only requirements of section 772(d)(1)(B) are (1) "import duties imposed", and (2) rebate, or non-collection, of those duties "by reason of the exportation of the merchandise to the United States." The statute mandates the adjustment without reference to whether products sold in the home market are made with imported raw materials. Where such requirements for adjustment are intended, they have been expressed in the statute (see, e.g., section 772(d)(1)(C) allowing adjustment to USP for value added tax (VAT) only if the VAT has been charged and paid on merchandise sold in the home market). Therefore, we disagree with petitioners that the Department should add a third prong to the test for drawback adjustments requiring examination of the relative usage of imported materials in export and home market sales.

Petitioners' argument concerning the third "prong" is moot with respect to Ta Chen as it proved that it only uses imported steel coil. Furthermore, because Ta Chen is a Taiwan customs-bonded factory, it only reported import duties actually levied on the raw material portion of domestic sales to end users. Therefore, the addition of an

average duty drawback amount to U.S. price is warranted. With regard to JYE and YCI, the issue is moot because we are using BIA in determining their respective final dumping margins."

Comment 2: Petitioners maintain that neither the statute nor the Department's regulations contemplate any adjustment to foreign market value for taxes, either in the form of a deduction in FMV for VAT incurred on home market sales, or as a circumstance-of-sale adjustment, to the extent that the taxes incurred on home market sales are greater or less than the amount of tax that the Department inputs to U.S. sales.

Petitioners maintain that the Department should have followed the decisions in *Zenith Electronics Corp. vs. the United States*, 10 CIT 288, 633 F Supp. 1382 (1986) (*Zenith*) and *Daewoo Electronics Corp. v. United States*, 13 CIT 253, 712 F Supp. 931 (1989) (*Daewoo*) by measuring the tax absorption. Petitioners claim that the Taiwan companies under investigation have not shown that the value-added tax (VAT) is passed through to Taiwan customers, and that therefore the Department's VAT adjustment to the U.S. prices is not warranted.

In response, CTI maintains that petitioners incorrectly interpret the rulings made in *Zenith* and *Daewoo*. CTI maintains that these decisions regarded adjustments to home market, not U.S. prices, as is the case in these proceedings. Second, CTI cites the Department's position in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France et al.*; Final Results of Second Administrative Reviews, 57 FR 28360, 28419, (comment 1), (1992), that until the Federal Circuit rules on this issue, the Department is "not following *Zenith* and its progeny."

Ta Chen maintains that it is the Department's long-standing practice not to measure the amount of tax incidence in the home market, citing as an example *Circular Welded No-Alloy Steel Pipe from Mexico*, 57 FR 42953, 42956, *Comment 6*, (1992). Ta Chen maintains that it provided documentation of the domestic VAT consistent with the reporting requirements of prior Taiwan respondents.

DOC Position

We agree with respondents that the VAT adjustment is in complete accordance with antidumping law and the Department's past practice. We do not agree with the CIT's decisions in *Zenith Electronics Corporation v. United States*, 633 F. Supp. 1382 (Ct. Int'l Trade, 1986) (*Zenith I*) and *Zenith Electronics*

Corporation v. United States, 770 F. Supp. 648 (Ct. Int'l Trade, 1991) (*Zenith II*), and have appealed this issue on its merits. Therefore, consistent with our long-standing practice, we have not attempted to measure the amount of tax incidence in the Taiwan home market. See *Color Television Receivers, Except for Video Monitors, From Taiwan*; Final Results of Antidumping Duty Administrative Review, 57 FR 92, 20241 (1992).

We do not agree that the statutory language, limiting the amount of adjustment to the amount of commodity tax "added to or included in the price" of WSSP sold in the Taiwan home market, requires the Department to measure the home market tax incidence. We are satisfied that the record shows that the tax was charged and paid on the home market sales.

We also disagree with petitioners that there is no basis in law for a circumstance-of-sale (COS) adjustment to FMV for differences in VAT payments. We do a COS adjustment in order to neutralize the effect of the ad valorem tax rate, relying on the Department's broad statutory authority to make adjustments for such differences in the circumstances-of-sale. As stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 57 FR 28,360, 28,419 (1992), because all home market sales were reported net of VAT, we added the same VAT amount to FMV as that calculated for U.S. price. This is the same as calculating the actual home market tax and then performing a COS adjustment to FMV to eliminate the difference between the tax in each market. Therefore, the respondents are entitled to the adjustment to U.S. price for home market VAT. With regard to JYE and YCI, the issue is moot because we are using BIA in determining their respective final dumping margins.

Comment 3: Petitioners maintain that any pricing and cost data of the respondents that are relied upon in the final determination should exactly and accurately reflect the data as recorded and maintained by the respondents in the normal course of business and be consistent with the concept of theoretical weight. Petitioners assert that substantial confusion has occurred, both because of incomplete and unclear responses by the respondents and because the terms "theoretical weight" and "actual weight" seem to have been defined differently by various parties. Petitioners state that pricing and cost data should be on either the pipe's length or its "theoretical weight" basis,

as producers of WSSP operate on this basis. Moreover, petitioners specifically state that no such "actual weight" data should be compared to "theoretical weight" data, as that would compound the problem of potential inaccuracies in a statistically unequal and unsound fashion.

CTI states that it was only two weeks before the deadline for rebuttal briefs that the Department determined in *Non-Alloy Steel Pipe from Korea* 57 FR 42945 (1992) that "prices and expenses should be calculated on the basis of theoretical weight." CTI maintains that it originally reported its sales on the basis of theoretical weight and in its deficiency letter, the Department requested that CTI report on the basis of actual weight. CTI maintains that in any case, it has reported the factors that would enable the Department to convert between "actual" and "theoretical" weights; furthermore, CTI maintains that, provided the calculations are performed consistently, it would not matter which basis is employed.

Ta Chen states that it believes that all companies are in the situation where some weights are measured according to their actual weight when possible, and that at other times a company will use the actual wall thickness to calculate a standard actual weight. It believes that there is no evidence that the market distinguishes between the two methods of establishing weight. Ta Chen maintains that the verification report's statement that material and conversion costs were reported on a theoretical weight basis is a misprint, and that in fact material costs were calculated on an actual weight basis. Ta Chen states that it takes the same amount of processing time to process a foot of pipe, irrespective of its weight, and that it internally calculates processing cost per foot, then converts that to a per kilogram basis based on the average actual kilograms per foot of pipe. Moreover, Ta Chen maintains that if one were to "convert" the costs reported from the supposed theoretical to an actual weight basis, one would need to adjust the weights downward.

DOC Position

We agree in part with petitioners. In the case of CTI, we agree with petitioner that pricing and cost data of CTI should be based on theoretical weight. CTI's original section B and C responses were prepared according to the theoretical weight, which is the weight utilized in all of CTI's sales. For the Section D response, it was not appropriate to report data according to theoretical weight, since cost-of-production (COP) data are maintained on an actual weight

basis. CTI revised data for the B and C responses transaction variables to an actual weight basis in order to bring conformity with the Section D reporting of COP/CV.

The Department has determined that CTI reported its cost information consistent with records kept in the normal course of business. We agree with petitioners that actual weight data should not be compared to data based on theoretical weight, and have ensured that such comparisons were not made in reaching this final determination. We have determined to use the sales data on a theoretical basis, since that is how merchandise was sold, and to convert the COP/CV data to theoretical in order to make comparisons to sales prices.

In the case of Ta Chen, the Department verified that Ta Chen, in its normal course of business, determined quantity by measuring the actual weight of pipes sold in the home market. We also discovered that it determined the quantity of some sales in the United States by measuring the actual weight of pipes and other sales by measuring the actual pipe wall thickness and converting this by standard industry formula into standard actual weight. In its normal record-keeping, Ta Chen did not distinguish between the two methods used. Ta Chen utilizes a standard cost system in which any variance from standard is applied to the standard cost to obtain the actual cost.

The variances were calculated using actual weights; therefore, when the variance is applied to the standard cost the resulting actual product cost is based on actual weight. Ta Chen reported its home market sales on an actual basis. It reported U.S. sales on an actual or standard actual basis. No adjustments to the COP or CV data were necessary. Based on sampling conducted at verification, the Department has determined that the actual weight was very slightly less than standard actual weight. Considering that the effect of the differential slightly increases the margin calculated, comparing home market prices based on actual weight, or CV based on actual weight, to a U.S. database where some sales prices are based on actual and some on standard actual weights, is conservative. For YCI and JYE the issue is moot because we are using BIA in determining their respective final dumping margins for purposes of the final determination.

Chang Tieh Industry Co., Ltd.

Comment 1: Petitioners maintain that the final determination should not be based upon CTI's data, but instead upon BIA. Petitioners assert that the U.S.

sales which CTI reported for the POI were unrepresentative of the market and hence an unreliable basis for dumping calculations. Specifically, petitioners allege that CTI negotiated with its U.S. customer artificially high prices for sales of a relatively small volume of subject merchandise during the POI in order to obtain exclusion from any antidumping duty order issued in this case, leaving CTI free to sell its merchandise in the United States in the future at prices that are less than fair value. As BIA, petitioners contend that the Department should reject CTI's entire U.S. sales database and apply the most adverse rate supported by the record. CTI contends that petitioners' arguments are flawed, both factually and legally, for several reasons. First, CTI claims that the volume of its sales merely reflects that it is a new entrant to the U.S. market. Second, CTI contends that its prices were not "inflated," and that, as verification had shown, CTI's U.S. prices were above its foreign market value, which simply means CTI is not dumping. CTI claims that, as a legal matter, its intent is totally irrelevant to this investigation, since dumping is determined by statutory criteria as to price and cost, and not by the subjective psychological criteria espoused by the petitioners. CTI also maintains that, as a legal matter, petitioners' proposition that the Department should reject CTI's entire U.S. sales database is preposterous, as petitioners cite no law to support its claim that the entire U.S. sales database of a respondent may be rejected if the margin calculations fail to establish the existence of dumping. CTI strongly objects to petitioners' reference to affidavits which it argues were untimely submitted and should, therefore, be stricken from the record. Thus, CTI contends that petitioners' arguments that CTI should be subject to punitive measures are without factual or legal basis and should be rejected in their entirety.

DOC Position

The Department has determined that petitioner's allegation does not constitute sufficient grounds to reject all of CTI's U.S. sales data and resort to BIA. However, as discussed above (see *Exclusion of CTI* section), the evidence presented by petitioner does raise serious concerns about potential evasion of the antidumping order, if one is issued in this case. The Department is addressing those concerns through a certification requirement.

With respect to the two affidavits in support of petitioner's allegation submitted on November 3, 1992, the

Department disagrees with CTI's argument that they were untimely. At a meeting with petitioner on November 2, 1992, the Department renewed its request of October 8, 1992, for APO versions of the affidavits. This is fully explained in the Department's memorandum to the file regarding this meeting. In response to our renewed request on November 2, Petitioner timely submitted the APO versions on November 3, 1992. Furthermore, the substance of petitioners' allegations have been on the record since July 1, 1992, and CTI has had ample opportunity to respond to petitioners' claims.

Comment 2: Petitioners claim that CTI's sales and cost verification reports detail that CTI impeded the Department's verification by being poorly prepared and by withholding documentation, and that in major respects the Department was consequently unable to verify the data for a lack of time. In addition, petitioners allege that the Department found misreported data. Petitioners maintain that these are the hallmarks of an uncooperative respondent and a failed verification, and therefore, the Department should use BIA in making its final determination. As BIA, petitioners contend that the Department should apply the most adverse rate supported by the record.

CTI contends that petitioners' claim that it failed verification is not supported by the record. CTI maintains that the verification was successful, and that there is, therefore, no legal basis for imposing a BIA rate. CTI notes that petitioners themselves cite to the fact that CTI passed its completeness test and that the quantity and value of certain preselected sales were traced to CTI's accounting records. CTI quotes several passages from the sales verification report to support its claim that there is a substantial body of evidence showing that verification was successful. CTI maintains that the criterion for use of a respondent's data is not predicated upon how smoothly the verification proceeded, but on whether the respondent's submitted data is, in the end, verified to be accurate and complete by means of referring to source documentation and company accounting records. CTI, therefore, contends that the Department should reject petitioners' request to use BIA for the final determination.

DOC Position

We disagree with petitioner. While CTI was not very well prepared at the onset of the verification proceeding, the company was able to produce the

required documentation for the most important aspects of the sales verification, such as those used in establishing the completeness and accuracy of the sales reported to the Department, by the end of the scheduled verification. However, certain charges and adjustments did not verify. Due to CTI's problems in preparing for verification, only one home market adjustment, for imputed credit, could be examined. Since this item did not verify, and it was the only home market adjustment examined, we are disallowing all home market charges and adjustments. CTI also incorrectly reported U.S. ocean freight charges. However, because all of the other U.S. charges and adjustments we examined tied to supporting documentation, we used BIA for ocean freight only. As BIA we applied the highest correct ocean freight charge to all U.S. sales.

We disagree with petitioner that CTI's cost verification report details that "CTI impeded the Department's verification by being poorly prepared and by withholding documentation and that in major respects the Department was consequently unable to verify the data it needed to verify for a lack of time." With respect to CTI's cost information the Department was able to confirm the basic accuracy of the submitted information, except as noted in specific comments below.

Comment 3: CTI maintains that the Department should not add both its full imputed credit and the reported bank charges to foreign market value in its margin calculations. The imputed cost of credit is calculated from the date of shipment to the date of payment. The bank charges reported include the bank's fee for the 12 days during which sales documents are in interbank channels. Respondent argues that since this expense is for 12 days of credit as calculated by the bank, the imputed credit period used by the Department should be reduced by 12 days if the Department increases FMV by the full amount of the bank charges.

Petitioners argue that the Department correctly adjusted foreign market value for the bank charges and the imputed credit expense that CTI incurred for its U.S. sales and did not double count U.S. credit expenses.

DOC Position

We disagree with respondent that the bank charges reported included 12 days of imputed credit. The bank uses a 12-day formula to set its fees for the cost of handling documents; we have determined that this fee is not a calculation of the opportunity cost

incurred by respondent in extending credit to its customers.

Comment 4: Petitioners note that CTI's cost verification report indicates CTI incorrectly calculated its production yield losses. CTI calculated its production yield losses by adding the coil input to slitting with the coil input to production and dividing that sum by the total of coil from slitting and finishing coil output. According to petitioner, the yield rates for coil slitting and for the production of pipe should be multiplied together.

DOC Position

Based on information obtained at verification, we determined that CTI erred in its calculation of material yield. We corrected COP and CV for the error in yield calculation.

Comment 5: Petitioners allege that CTI failed to include year-end bonuses in its reported labor costs. Petitioners state that during verification the Department discovered that year-end bonuses were recorded in CTI's accounting records that had not reported in the COP information CTI reported to the Department.

DOC Position

Based on information obtained at verification, we determined that CTI understand its labor cost by failing to include year-end bonuses in its calculation of COP and CV. We adjusted COP and CV to include the year-end bonuses.

Comment 6: Petitioners note that CTI's cost verification report states that CTI understated its indirect labor costs, because the Department discovered that CTI failed to include all indirect labor costs in its allocation of fabrication cost. Petitioner argues that if the Department decides to rely on any of CTI's data in lieu of total BIA, the Department should increase CTI's reported fabrication costs to include CTI's indirect labor costs.

DOC Position

We agree with petitioners and have included the indirect labor costs in our calculations of COP and CV.

Comment 7: Petitioners allege the cost verification report indicates that CTI failed to demonstrate that its costs of materials should be offset by scrap revenue, and therefore, as BIA, the Department should not allow CTI to offset its material costs by the value of scrap sales.

CTI states that "petitioner properly notes that scrap value is included in [CTI's] cost of goods sold and is, therefore, available for the Department to use as a reduction to material cost."

DOC Position

We disagree with CTI that information contained in the company's financial statements is adequate support for the per-unit scrap credit claimed. CTI had not prepared any documentation prior to verification to support the inclusion of scrap revenue, nor was any information presented at verification concerning the actual level of scrap income associated with the steel pipe products. Accordingly, we have removed the scrap revenue from reported materials cost used in this final determination.

Comment 8. Petitioners allege that CTI improperly allocated its labor and overhead costs. Petitioners maintain that contrary to CTI's claims that there are no overhead costs that are incurred exclusively on WSSP, CTI's own production flowcharts list three production steps as exclusively done for the subject merchandise: annealing, straightening, and pickling. Petitioners also maintain that CTI should have reported separately the labor and overhead costs that are exclusive to pipe production.

Petitioners maintain that, additionally, of the four product lines produced by CTI, only pipe and tube require welding operations. They contend that the labor and overhead costs for welding should have been allocated exclusively to pipe and tube production. Further, petitioners argue that by allocating labor costs to all products on the basis of tonnage produced, CTI understand the actual per-unit labor costs it incurred for WSSP.

Petitioners therefore assert that the Department should substitute the labor and overhead costs provided by the petitioners as BIA in calculating CTI's COP and CV.

CTI maintains that petitioners erred in claiming that annealing, pickling, and straightening lines are used only for the production of WSSP, and that, in fact, tube as well as pipe is subject to straightening, and since CTI can use its annealing and pickling lines for subcontract work. Furthermore, CTI contends that petitioners' allegations regarding the allocation of labor and overhead are untimely. CTI also maintains that not all of the allocations demanded by petitioners are possible, because most of its production equipment is not dedicated to one product, nor is the factory labor force differentiated in its assignments. CTI further argues that labor and overhead constitute a very small part of its total cost of production. CTI states that the allocation of labor and overhead costs over production tonnage is reasonable

because such costs are primarily a function of tonnage, not steel type or size.

DOC Position

We agree with CTI that labor and overhead costs constitute a small part of the products COP. The labor and overhead costs reported by CTI were reviewed at verification and determined to be consistent with CTI's normal cost accounting methodology. The Department did not note any inconsistencies which would necessitate the use of BIA in the calculation of labor and overhead.

Comment 9. Petitioners allege that, based on their reading of the verification report, CTI failed to demonstrate that a certain claimed adjustment to cost of materials was warranted, and that the Department should increase material costs accordingly.

CTI responds that petitioners are incorrect to claim that the Department revise its material costs upward, as the Department verified its material costs coil by individual coil.

DOC Position

CTI did not claim the adjustment to its material cost which petitioners are opposing. Therefore, the issue is moot.

Comment 10. Petitioners maintain that the Department should use the profit rate reported by CTI for home market sales of the merchandise under investigation in its constructed value calculations instead of the statutory minimum of eight percent.

CTI argues that it derived its profit figure by a calculation from its submitted section B and D data. It claims that the only circumstance in which the Department would reach constructed value would be if substantial changes were made to CTI's reported COP. CTI maintains that if the Department were to do so, then the profit figure suggested by petitioners would no longer be applicable, because that figure was calculated according to CTI's section B and D data. Hence, CTI argues, if the Department does find below-cost sales and a reason to use constructed value, it should use the statutory profit figure.

DOC Position

The Department calculates the average home market (HM) profit on reported sales. Should any of the product's FMV be based on CV, profit will be determined as the greater of the average HM profit calculated for the home market sales or the statutory minimum.

Comment 11. Petitioners maintain that CTI understated its ocean freight

charges for its U.S. sales. They contend that since CTI used estimates rather than actual costs, the Department should use the highest ocean freight rate discovered during verification as BIA.

DOC Position

We agree with petitioners. We discovered that ocean freight charges had been reported incorrectly. The Department is, therefore, using the highest verified ocean freight charge as BIA for all U.S. sales.

Comment 12: Petitioners maintain that CTI failed to support the interest rate that it used to calculate its reported home market credit and inventory carrying costs. They contend that the Department should deny the adjustments for credit and inventory carrying costs that CTI claimed for its home market sales.

CTI maintains that first, inventory carrying costs are not applicable, as all U.S. sales are purchase price sales. Second, it states that the Department should consider the credit period net of the period for which CTI's bank charges interest. As for the interest rate to be applied, CTI maintains that the Department should use the highest reported interest rate, since the weighted-average rate was not provided.

DOC Position

We agree with petitioners that the domestic short-term interest rate was not substantiated. During the verification, we requested a worksheet listing all the outstanding loans during the POI, however, company officials declined to provide a worksheet, claiming that time did not permit its preparation. We were given a partial loan listing. We were not able to confirm several of the bank loan rates listed. We are, therefore, not allowing an adjustment for credit on home market sales, but, as BIA, are continuing to use the reported rate to calculate imputed credit on U.S. purchase price sales. CTI was so unprepared for verification that the only home market charge or adjustment that could be examined was interest rates for credit expense calculations. Because CTI failed verification of the only adjustment reviewed, we are disallowing all home market charges and adjustments as BIA. We disagree with respondent that the bank charges reported included 12 days of imputed credit. The bank uses a 12-day formula to set its fees for the cost of handling documents; we have determined that this fee is not a calculation of the opportunity cost

incurred by respondent in extending credit to its customers.

Jaung Yuann Enterprise Co., Ltd.

Comment 1: Petitioners maintain that the verification of JYE revealed that its data with respect to each of the three components of a dumping analysis (home market sales, U.S. sales, and cost of production) contain errors and omissions of such significance that the Department should reject the respondent's data entirely and apply the most adverse rate supported by the record as BIA for purposes of determining JYE's final dumping margin.

Petitioners maintain that JYE's failure to report completely its home market sales was a major impediment to the entire verification procedure, as the Department was forced to take inordinate amount of time to locate and examine unreported home market sales and to provide JYE's officials with the opportunity to explain the incomplete reporting.

With respect to home market sales, petitioners contend that the time constraints created by JYE's failure to report completely home market sales prevented the Department from thoroughly reviewing U.S. preselected sales transactions. Petitioners claim that even this minimal sampling of sales revealed such errors as to render the entire U.S. sales database suspect and inherently unreliable.

Finally, petitioners maintain that JYE's COP and CV data must be rejected in their entirety, since JYE failed to provide actual costs for many of the pipe models under investigation and also failed to provide costs for the proper time period. Petitioners maintain that such errors render JYE's cost data unusable for the purpose of the Department's analysis.

JYE argues that the Department should not resort to BIA in determining its final dumping margin. It claims that the omission of 5 and 8 inch products does not affect the calculation because none of these products were sold in the United States during the POI. JYE also claims that the prices for unreported sales were, in most instances, not higher than the prices for reported sales of the same products. Moreover, JYE maintains that the omitted sales only represent 32 models, which it believes is a negligible number of products.

JYE maintains that it calculated its COP/CV data based on the cost information in its new cost accounting system from July through November 1991. It claims that this methodology is more accurate than one using cost data from before July 1991, since JYE's cost accounting system was not established

until that time. JYE also maintains that BIA is not warranted, because if changes or modifications to the reported methodology are necessary, those can be accomplished by use of information on the record.

JYE maintains that if the Department determines that BIA is necessary, it should only apply BIA to calculate the dumping margins on those U.S. sales which may be affected by unreported home market sales.

JYE claims that even if the Department considers BIA necessary, it should not use the most adverse rate as BIA. It maintains that the most adverse rate is only valid as a punitive measure against uncooperative respondents, and the lack of preparation in advance of verification does not constitute uncooperative behavior. JYE claims that the Department's verifiers did not extend verification by another half-day, and that this scheduling, not a lack of preparedness on JYE's part, was the primary cause resulting in data remaining "unverified."

Moreover, JYE argues that even if the Department determines that there are serious deficiencies regarding verification which it would ascribe to JYE, recent decisions such as Roller Chain, Other Than Bicycle, from Japan, 57 FR 6808 (1992), and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain components thereof from Japan, 56 FR 65228, indicate that the Department should find a company cooperative and use non-punitive BIA such as the highest rate among other respondents. JYE states that in Portable Electric Typewriters from Japan, 56 FR 56393, 56394, (1991), the Department gave a respondent who submitted no responses to the Department punitive BIA and gave a respondent who only made partial responses to the Department non-punitive BIA. In addition, JYE points to the administrative review of Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Germany, 56 FR 31692, where a punitive BIA was applied both to a firm whose sales listing was flawed and to a firm whose cost data was not substantiated at verification; JYE maintains that Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 42961 (1992) indicates non-punitive BIA even where "verification revealed significant inconsistencies in the information reported * * *". Lastly, JYE states that despite announcing a new BIA hierarchy in *Antifriction Bearings* in July 1991, the Department nonetheless chose to apply non-punitive BIA for totally non-cooperative companies in Color Television Receivers, Except for Video

Monitors From Taiwan, 56 FR 65218, 65227, (1991) and in Roller Chain from Japan, 56 FR 32175, 32176, (1991).

DOC Position

We agree with petitioners that the sales information submitted by JYE must be rejected in its entirety. As described in JYE's sales verification report, the DOC team encountered serious obstacles in conducting verification, partly attributable to a general lack of preparedness on the part of the respondent. The completeness test was a struggle to finish and took nearly all of the three days allocated for verification. We were able to examine only one home market charge and review U.S. sales expenses from just one preselected sale and one randomly selected sale.

The completeness portion of the verification consumed a significant portion of time due to the configuration of JYE's sales accounting system and the discovery of numerous unreported home market sales. As described in the verification report, the under-reported sales in the home market were discovered when we checked JYE's June 1991 through May 1992 daily sales ledger to confirm that all dates of sale (DOS) within the POI were reported. We noted a sale that should have been included in JYE's response but was not. After lengthy deliberations company officials explained that this sale was excluded from the response because its government uniform invoice (GUI) number was not keypunched into the computer. We then requested that company officials instruct their computer in our presence to print out the sales of covered products with a DOS within the POI that were not included in JYE's response to the Department. The resulting printout showed that the home market sales had been significant under-reported.

In addition, the verification team found numerous discrepancies when reviewing the one U.S. purchase price pre-selected sale and one sale randomly selected on site. There were discrepancies in the following charges and adjustments: foreign brokerage, foreign inland freight, harbor maintenance fee, commission, bank handling charges, and value added tax. Company officials often had no explanation for the discrepancies. We found discrepancies in nearly every charge examined with the exception of ocean freight and duty drawback, as detailed in the verification report.

With respect to petitioners' comments concerning the cost information submitted by JYE, we agree with petitioners that this information must be

rejected in its entirety. The HM cost of production data submitted JYE does not reflect the actual cost of producing each of the specific products sold in the home market. As noted in the August 24, 1992, cost verification report JYE did not provide the actual cost incurred to produce many of the specific pipe products sold in the home market. For these specific models of pipe, which were not produced from July through November 1991, JYE substituted the actual cost information for a "similar" product. The differences the substitute product included those with differing outer diameter, varying wall thickness, dissimilar length, and in one instance substituting the cost of an annealed product for the annealed ASTM pipe under investigation. JYE also prepared difference in merchandise adjustments using the substitute HM products. Further, the cost information JYE chose to submit is not from the appropriate time period.

The effect of these discrepancies would make any calculations completely meaningless. The extent of the omissions and inconsistencies in the reported cost information would require complete revisions to virtually all of the information on the record. We disagree with JYE's assertion that information on the record could be used to "modify" JYE's submitted cost information. We believe that such extensive revisions would also require obtaining additional information.

The degree to which JYE was unprepared for verification and the nature and extent of the information which verification revealed to be incorrect and/or incomplete constitute uncooperative behavior on the part of a respondent. Therefore, for the reasons enumerated above, the Department is using the highest rate in the petition, 31.9 percent, as BIA in the final determination. Petitioners and JYE had further company-specific comments which are moot because BIA is being applied in determining JYE's final antidumping duty margin.

Ta Chen Stainless Pipe Co., Ltd.

Comment 1: Petitioners contend that the COP and CV data submitted by Ta Chen are deficient and should be adjusted for purpose of the final determination, and objecting to the inclusion of Ta Chen's cost of purchasing semi-finished pipe for five reasons. First, petitioners contend that these costs should be excluded because they claim the pipes purchased were not produced by Ta Chen, and claim that these were finished pipes only requiring cleaning prior to resale.

Second, petitioners claim that the prices at which Ta Chen purchased the pipes in question were made at levels which indicate that they should not be used in the Department's COP and CV analysis.

Third, petitioners claim Ta Chen's accounting system tracks these pipes separately from other inventory and that such record-keeping *per se* warrants separate treatment for purposes of COP and CV.

Fourth, petitioners assert that Ta Chen's reported raw material costs are distorted because of the inclusion of what they characterize as a one-time purchase of such semi-finished pipes.

Fifth, petitioners maintain that following the practice of valuing inventory at the lower of cost or market value should result in Ta Chen's using the cost of purchasing semi-finished pipe as a basis for determining the market value of its total WSSP inventory and to subsequently calculate an inventory write-off.

Ta Chen responds that first, as explained at verification, the pipes in question were not merely cleaned but both annealed and pickled by Ta Chen, both processes are required to meet ASTM A-312 standards. Ta Chen doubts that the distinction between semi-finished and uncleaned pipe is relevant, since the Department is investigating Ta Chen both as producer and exporter of WSSP. Ta Chen maintains that, in any case, the verified conversion costs document that significant processing occurred with respect to the semi-finished pipes.

Second, Ta Chen maintains that it paid a significant sum for the pipe in question.

Third, Ta Chen states that the semi-finished pipe was recorded in Ta Chen's ledgers as "raw material," and maintains that the cost verification exhibits evidence that the semi-finished pipe inventory is still a raw material inventory. It states that semi-finished pipe was not recorded in the same raw material ledger as was steel coil simply because semi-finished pipe is not the same as coil.

Fourth, Ta Chen maintains that petitioners' figures used to analyze the impact of the purchase of the semi-finished pipes on the company's overall material costs are not credible. It states that even if the semi-finished pipes had been obtained for free, their inclusion could not credibly account for the decline in overall material costs petitioners claim. It maintains that, in any event, the Department routinely includes in its COP/CV calculations extraordinary events which increase

costs, thus consistency and fairness would warrant inclusion of extraordinary events which decrease costs.

Fifth, Ta Chen maintains that the accounting concept that inventory is based on the lower of cost or market value is based on the market value as of the balance sheet date, which, for Ta Chen, would be October 31, 1991. Since the pipe in question was purchased between March and May 1991, it was not the proper basis for determining inventory market value at the end of the fiscal year. Ta Chen states that it did, in fact, write-off substantial losses on inventory which were caused by significantly declining prices of steel coil, losses which were calculated and audited by their independent auditors, and reported in its financial statements.

DOC Position

We agree with respondents. The section D questionnaire states that the cost of production should include the cost of manufacturing incurred during the POI. The purchase price of the semi-finished pipe is the cost of that specific raw material to Ta Chen. The stage of completion is irrelevant to the question, if the product was purchased in its finished state the Department would simply weight average the purchased product with the product produced by Ta Chen. In addition, the documentation clearly shows that the raw material in question was used to produce finished pipe sold during the POI. Furthermore, the purchase of semi-finished pipe at a discount price in no way effects the market price of Ta Chen's other raw materials, therefore it would be inappropriate to include an additional inventory write-down amount.

Comment 2: Petitioners maintain that Ta Chen's COP and CV values should be based on the date on which the pipe was produced rather than the date on which the pipe was shipped. They claim that the use of the shipment date would be valid only if Ta Chen purchased the raw materials, manufactured the product, and shipped it to the customer all on the same day. They estimate an inventory turnover period substantially different from that reported by Ta Chen and state that the use of the shipment date understates the actual cost of the materials used to make WSSP.

Ta Chen states that the inventory turnover period calculated by petitioners includes not only WSSP, but inventory of butt-weld and screw fittings, and that the Department verified the inventory period reported for WSSP. Thus, Ta Chen maintains, it is reasonable to assume that pipe

produced in a given month is shipped that month, and to assign to pipe shipped in a given month the cost of making pipe that month.

DOC Position

We agree with petitioners. The Department's normal policy is to use the weighted-average cost of manufacturing incurred by the company during the POI, except in unusual cases where there are substantial changes in cost, e.g., hyper-inflationary economies. The material costs reviewed at verification did not support the use of monthly data. Therefore the Department calculated a weighted average cost over the POI using the sales quantities, by date of sale, as a weighing factor.

Comment 3: Petitioners maintain that the Department should correct errors in the variances reported by Ta Chen, based on discrepancies they believe were discovered at verification.

Ta Chen responds that it used the correct variances. It states that the cost verification report did not point out errors, but simply raises a methodological issue—whether a particular methodology used is the most correct. Ta Chen maintains that petitioners have not provided any reasons why the methodology is incorrect, but simply request an increase in Ta Chen's conversion costs.

According to Ta Chen, three methodologies are theoretically possible. The first, which petitioners urge the Department to use, is to add packing cost back to the total actual conversion cost before determining the variance. Ta Chen maintains that this would double count packing costs.

The second would be to remove packing costs from both the standard and actual costs before calculating the variance, and then applying the resulting variance to a standard which does not include packing cost. Ta Chen states that it used this methodology in reporting the cost data for November 1991, because its new standard cost system allowed it.

Using the third methodology, the variance factor is based on the difference between total standard cost and total actual cost where packing is only removed from the total actual cost. Ta Chen maintains that it had to use this third methodology in responding to the Department's cost questionnaire because it was calculating the average conversion cost for the period June through November 1991 in response to the Department's request; thus methodology number two was not possible. Ta Chen states that, nonetheless, the methodology employed (number three) is closer to the correct

amount than would be obtained using petitioners' preferred methodology (number one).

Ta Chen maintains that in calculating the variance between actual and standard conversion costs, it properly subtracted the cost of packing materials from the total actual monthly conversion costs.

Petitioners contend that Ta Chen's arguments fail to address the issue raised in the cost verification report, which they maintain notes that Ta Chen reported more favorable variances because Ta Chen compared monthly standard conversion costs that include packing costs with monthly actual conversion costs that do not include packing costs. Petitioners therefore assert that the Department should revise Ta Chen's report COP and CV to include variances that properly account for packing costs.

DOC Position

We agree with the respondent. Since the Department accounts for packing costs separately, the variance must reduce the standard conversion costs to avoid double counting. The packing costs are included in the standard cost. By subtracting the packing costs from the actual costs a favorable variance occurs, and when applied to the standard, effectively removes the packing costs from the standard.

Comment 4: Petitioners maintain that the Department should deny Ta Chen's claimed reduction to material costs for exchange rate gains for several reasons.

First, petitioners maintain that if Ta Chen is permitted to include an exchange gain/loss in reporting the cost of materials, it should also include exchange gain/loss in reporting the activities of its accounts receivable (A/R), which it clearly stated it had excluded.

Second, petitioners maintain that because Ta Chen recorded exchange rate gains/losses as a non-operating income/loss in its financial statements, it should not be used to offset operating costs, because gains/losses are not generated from Ta Chen's primary business activity of manufacturing WSSP.

Third, petitioners claim that lower-than-standard prices for WSSP may have been recorded in Ta Chen's materials price variance. If the exchange rate gains/losses were incorporated in the materials price variance, then those same gains/losses should not be counted a second time as an adjustment to costs.

Fourth, petitioners claim that because of the interval between the date Ta Chen purchased steel coil and the date

Ta Chen paid for it, it is unclear whether the exchange rate gains/losses reported by Ta Chen during the POI were generated or purchases of raw material used in the production of WSSP sold and reported in the POI or were merely exchange rate gains/losses recorded in Ta Chen's books during the same period.

Fifth, petitioners claim that the total exchange rate gain/loss used by Ta Chen in its COP calculations does not appear to reconcile to the total amount reported in its audited financial statements.

Sixth, petitioners state that since the POI is from June through November 1991, and Ta Chen's exchange gains/losses were based on activities for the entire fiscal year November 1990 through October 1991, it is unclear whether those gains/losses occurred during the POI.

Ta Chen contends that it is appropriate for it to treat gains/losses from (A/R) differently from those from the raw material accounts payable (A/P). It maintains that any exchange loss or gain for settlement of A/R has nothing to do with production activity, while in contrast, such gains or losses for materials purchased to produce WSSP directly relate to production and should be considered.

Ta Chen argues that whether exchange gains/losses on A/P are recorded as operating or non-operating income is irrelevant to whether they are related to pipe production activity. The respondent maintains that only with the exchange rate adjustment is the actual amount Ta Chen ultimately pays for its steel coils reflected in the amounts reported to the Department. Ta Chen maintains that this actual amount should be the true focus of the Department's investigation.

Ta Chen maintains that petitioners' suggestion that exchange gains/losses on material purchases be taken into account in the material price variance is erroneous because material price variance has nothing to do with the exchange gain or loss for raw materials purchased.

Ta Chen also maintains that it records in its books the cost of imported coil based on the US\$/Taiwan NT\$ exchange rate at the time of purchase, and that when it pays for the coil 180 days later, payment is at the exchange rate as of the date payment is made; and that adjustments for the difference between the two figures are separately recorded in Ta Chen's books and audited financial statements. Ta Chen contends that it allocated the exchange gains/losses on the purchase of raw materials as it does internally in its cost

accounting records, as audited by Ta Chen's outside auditors, thus allowing the Department to reconcile the reported exchange gains/ losses to Ta Chen's audited financial statements.

DOC Position

We agree with the respondents. All costs directly associated with the purchasing of materials should be included in material costs. The respondent demonstrated at verification that exchange gains/losses were included in the costs and that the amount allocated reconciled to the financial statements.

Comment 5: Petitioners argue that the Department should reject the offset to production costs for Ta Chen's sales of scrap for two reasons. First, they maintain that verification revealed that some scrap sales were actually sales of random-length pipe. Respondents maintain that the petitioners' inference from the verification report is incorrect, and that all random-length sales were recorded and reported separately from scrap sales.

Second, petitioners maintain that Ta Chen improperly calculated its scrap ratio, claiming that the cost verification report revealed that the respondent used an inconsistent basis to calculate the scrap ratio.

Ta Chen states that petitioners' assertion that the reported scrap sales include sales of random-length pipe is incorrect. Ta Chen also maintains that the adjustments for scrap and indirect materials were made correctly because the indirect materials costs were incurred on materials-in-transit and, therefore, the rate should be based on materials-in-transit, because the materials consumption on which scrap rate was calculated is a close approximation of the requisition figure as long as inventory remained relatively constant. In addition, Ta Chen maintains that its duties and its claims on suppliers were included inadvertently in the calculation and the rate should, if anything, be higher. Ta Chen also maintains that, if anything, it understated the appropriate downward adjustment to material costs for the revenue from scrap sales. Ta Chen states that material requisitions is the cost of material put into use for all purposes, including production of WSSP, internal use such as machinery improvements, and for sales of small pipe samples. Ta Chen maintains that material consumption means only the cost of materials put into use to produce WSSP for sale and that, in general, material requisitions should equal or exceed material consumption.

Ta Chen concedes that, given these assumptions, one might initially think that Ta Chen's approach may overstate the downward adjustment to material costs from the revenue from scrap sales. Ta Chen maintains however that given its particular circumstances, this is not the case. Ta Chen states that its material consumption exceeds material requisitions because adjustments for Taiwan import duties and Ta Chen's claims against its suppliers are included in material consumption, but not in material requisition, as they are incurred after requisitioning and cannot be anticipated. Ta Chen maintains that its approach was, therefore conservative, because use of material requisition as the basis for determining the scrap rate would have increased that rate to Ta Chen's benefit, since a higher rate would reduce reported material costs.

DOC Position

As to the first point, we agree with the respondent. Petitioners base their claim on a typographical error in the verification report. The reference to scrap invoices on page 10 of the verification report is mistaken, and should read "original invoices for sales of random-length pipe." The report error was recorded by a DOC memorandum on September 24, 1992. As to the second point, the Department also agrees with Ta Chen. Although Ta Chen calculated the rate at which to apply scrap sales on one base and applied the rates to a different base, the net effect is immaterial. For example, the materials consumption amount on which the scrap sale rate was calculated the closely approximates the material requisition amount. Since the rate is an approximation, the petitioners' suggested adjustment was not made.

Comment 6: Petitioners maintain that if the Department uses the costs reported by Ta Chen after November 1991, these costs should be revised to include losses on inventory. It states that this reduction appears appropriate because Ta Chen claims that it recorded a favorable material cost variance for stainless steel coil as a percent of its revised standard material costs.

Ta Chen maintains that the inventory loss allocation increased its reported costs for the November 1990 to October 1991 period, consistent with GAAP and the recommendations of Ta Chen's outside auditors. Ta Chen states that its methodology is consistent with past Department precedent. (See *e.g.*, Antifriction Bearings Other than Tapered Roller Bearings and Parts Thereof from France, *et. al.*, 57 FR 28360, 28416, (1992).

DOC Position

We disagree with petitioners. There is no basis to believe that because Ta Chen incurred inventory losses in fiscal year 1991 that they will also incur such losses in fiscal year 1992. The inventory losses from 1991 clearly do not relate to the material costs incurred from November 1991 to March 1992.

Comment 7: Petitioners claim that the Department should revise Ta Chen's claimed general and administrative (G&A) costs because of the differences between the figures in Ta Chen's worksheets and in the section D computer data reported. They maintain that the cost verification report indicates that all of Ta Chen's home market G&A expenses, net of any expenses properly identified as selling expenses, should be used to calculate a G&A expense ratio as a percentage of cost of sales.

Ta Chen maintains that petitioner's claims are erroneous because it has fully explained that the difference is due to the amount of its exchange rate gains/ losses experienced on purchases of imported steel coil.

DOC Position

We agree with petitioners. Respondent would have incurred the G&A expenses it wants to allocate to indirect selling whether or not any sales had been made in the home market. Therefore, the Department has allocated all G&A expenses, net of any expenses properly identified as selling expenses, as a percentage of Ta Chen's cost of goods sold.

Comment 8: Petitioners maintain that the Department should use BIA sales made to one U.S. importer because that importer is related to the producer/ exporter to such a degree that, pursuant to section 771(13)(B) of the Act (19 U.S.C. 1677(13)(B)), it should be considered the "exporter" of the subject merchandise. Petitioners maintain that sales through this party should have been reported as ESP sales. As BI, petitioners recommend using the highest margin of any of the ESP sales reported by Ta Chen as sold through TCI.

Ta Chen maintains that, based on its analysis, the U.S. party in question is not a related party under U.S. dumping law. Ta Chen states that in any case, the Department's deficiency letter stated that reporting these sales was not necessary. For both reasons, BIA is not appropriate.

DOC Position

We agree with Ta Chen. As the Department stated in its preliminary determination, we excluded from our analysis certain sales through this agent,

regardless of the nature of its relationship to Ta Chen, because these sales were made in small quantities, and we have examined a sufficient number of sales (see 19 CFR 353.42(b)). We are excluding these sales from analysis for purposes of this investigation only; all U.S. sales are subject to Departmental analysis for future administrative reviews.

Comment 9: Petitioners argue that the export losses on U.S. sales should be included in U.S. indirect selling expenses. They assert that the amount of the export losses recorded in Ta Chen's financial statements which have been verified as pertaining to U.S. sales should be added to the expenses currently reported as U.S. indirect selling expenses. They also note that Ta Chen has allotted a portion of the salaries of non-sales staff at Ta Chen headquarters to home market indirect selling expenses, and also allocated the same proportion of headquarter G&A expenses to home market indirect selling expenses. They maintain that, if the Department accepts Ta Chen's allocations in determining home market indirect selling expenses, it should allocate the relevant proportion of general salaries and office G&A expenses which pertain to exports to U.S. indirect selling expenses.

Ta Chen maintains that the complete methodology for its allocation of home market selling expenses is correct. It maintains that its allocation is consistent with the treatment of selling expenses in New Minivans from Japan, 57 FR 21937, 21952 (1992) and Television Receivers, Monochrome and Color, from Japan, 56 FR 34180, 34183, (*Comment 8*) (1991). It maintains that it has properly included the general and administrative costs of the Tainan, Taiwan headquarters because those types of selling expenses are included in the U.S. selling expenses reported for the subsidiary TCI. Ta Chen maintains that the oral testimony of company officials for allocation of G&A expenses to selling efforts is appropriate and not an abuse of discretion. Ta Chen maintains that Ta Chen's Tainan, Taiwan headquarters do not act as a sales center for U.S. sales and that the Department corroborated this at verification.

Petitioners contend that if any of the G&A expenses are to be allocated to selling expenses, the Department should reject Ta Chen's "headcount" methodology and re-allocate Ta Chen's expenses according to a more reasonable methodology, such as allocating indirect selling expenses according to the relative percentage of

the cost of goods sold in the domestic and U.S. markets.

DOC Position

Regarding the treatment of Ta Chen's loss on exports, the Department agrees in part with petitioners that these expenses should be accounted for in calculating the company's dumping margin. We have, however, classified these expenses as direct selling expenses, similar to warranty or guarantee expenses, because these expenses were incurred on specific sales and have included them as such as our final calculations.

Regarding the treatment of Ta Chen's allocation of non-sales salaries and headquarter G&A expenses, we disagree with both petitioners and respondents. We have determined that these expenses are not truly expenses associated with selling, but instead are associated with the general operation of the company. These expenses are therefore not being included as part of either home market or U.S. indirect selling expenses.

Comment 10: Petitioners point to several errors discovered before or at verification which require correction. They maintain that any discounts and commissions not reported by Ta Chen should be subtracted from U.S. price, and that one U.S. price should be changed from its reported value. They state that the imputed credit for purchase price sales should be recalculated by increasing the credit period by three days because the date of shipment was reported incorrectly. They maintain that Ta Chen should increase its Taiwan inventory period for ESP sales by the amount verified. They also maintain that ocean freight for West Coast shipments should be recalculated to tie the actual costs per invoice more directly to ESP sales.

Ta Chen maintains that the ocean freight was reported as accurately as possible, given that its subsidiary, TCI, cannot determine which ship was used to transport the pipe of a particular stock sale. Ta Chen stresses that the Department should make all corrections reported since the submission of the last computer tape to the Department. It maintains that the Department should adjust CV according to Exhibit 1 of its June 24, 1992, submission, and that the Department should include TCI's "off-the-books" sales in allocating U.S. selling expenses.

DOC Position

The Department has made any corrections to the last databases submitted to the Department, prior to verification, on June 24, 1992. Ta Chen

enumerated the previously missing discounts to the Department on July 31, 1992; these were subjected to the Department's verification, and are being subtracted from gross prices. The commissions which were reported as missing by Ta Chen in its May 22, 1992, letter were reported on the June 25, 1992, updated computer tapes, the last tapes submitted, prior to verification, and are being subtracted from gross prices. The additional days of ESP inventory carrying costs which were reported by Ta Chen in its June 24, 1992, letter were included in the June 25, 1992, updated computer tapes. We agree with petitioners that some modification of the purchase price shipment date is warranted. Since the shipment date was incorrect, we are increasing the purchase price credit period by three days; we are also adding two days from incorrect dates of payment discovered. Similarly, based on the verification of ESP sales in California, we are increasing the ESP credit period by two days. We disagree with petitioners regarding the re-allocation of ESP ocean freight charges. While charges specific to the Ta Chen intra-company shipment invoices could be calculated, a careful examination of the ESP documentation reveals that tracing such an allocated cost to the pertinent stock sales from TCI is not feasible. The Department so noted in its September 24, 1992, memorandum to the official file, correcting any impression from imprecise wording in the TCI verification report which suggested that such re-allocation was either reasonable or necessary.

The Department is using the CV amendments contained in Exhibit 1 of the June 24, 1992, submission for purposes of the final determination. The Department disagrees with Ta Chen that "off-the-books" sales should be included in the base across which to allocated U.S. selling expenses. While TCI did maintain correspondence records in completing these Ta Chen Sales, the corporation in its normal business practice considered these to be sales made by Ta Chen Taiwan, and recorded the revenue from these sales as such. The normal accounting practice of the company is determinative here.

Comment 11: Ta Chen maintains that monthly COP/CV costs should be used where COP/CV data is provided for pipe shipped in the indicated month, including the November 1991 through March 1992 monthly costs. Ta Chen argues that there is significant variation in monthly material costs which supports the use of monthly material cost data. Ta Chen asserts that,

considering that the first and most important consideration for price quotes is material cost and considering that the average time between date of sale and the date of shipment is three to four months, the use of monthly material cost data is fully warranted. Second, Ta Chen maintains that failure to use monthly cost data for the period November 1991 onward would greatly distort costs. Third, Ta Chen argues that the change in material costs between October and November 1991 was not particularly unusual, nor was it due to factors outside of the normal course of business. Ta Chen maintains that pipe made with semi-finished pipe is still Ta Chen pipe, and that use of such pipe is irrelevant to classifying the material costs change between October and November 1991. Ta Chen also states that the percentage change is comparable to that which occurred in other months, such as between November and December, 1991, and June and July, 1991. According to Ta Chen, there has always been significant variation from month-to-month in material costs, and thus a significant variation between any two particular months is fully expected. Ta Chen maintains that the costs Ta Chen reported for the period November 1991 onward are the same as those used in Ta Chen's audited financial statement for that period, and since Ta Chen reported its costs according to its audited general accounting process, the Department should rely on Ta Chen's costs figures as being in agreement with GAAP. Finally, Ta Chen argues that even if the use of semi-finished pipe were a relevant factor, use of such pipe accounts for less of the material cost reduction than the cost verification report suggests. Ta Chen asserts that the falling price of steel coil was a more important factor than the purchase of the semi-finished pipe in the decline in material prices. Ta Chen states that the verification report does not indicate the basis or rationale for the percentage decline which it lists as due to the decline in coil prices.

Petitioners argue that the Department properly used Ta Chen's costs during June through October 1991 for the preliminary analysis and should continue to do so for the final determination. They maintain that Ta Chen is incorrect in its assertion that the Department should use the date of shipment to determine the appropriate monthly COP and CV. Petitioners cite the Final Results of Antidumping Duty Administrative Review: Electric Golf Cars from Poland, 57 FR 10334, 10336 (March 25, 1992) to support their contention that the COP and CV should

be based on costs from a period preceding the date of sale.

Petitioners also rebut Ta Chen's claim that the purchase of semi-finished pipe is irrelevant to the calculation of COP and CV. Petitioners maintain that the pipe in question had already been annealed and only required pickling. Petitioners therefore repeat their claim that the purchase of these pipes shall not be included in the COP and CV analysis.

Petitioners conclude by arguing that the Department should calculate a weighted-average cost of materials based on Ta Chen's actual costs during June through October 1991, or should adopt the method used for its preliminary analysis and use the October material costs as BIA for cost of sales made after November 1, 1991, because any reliance upon the average costs reported by Ta Chen for November 1991, would cause a skewed and unfair result.

DOC Position

As stated in Ta Chen *Comment 1*, we agree with respondent that the purchases of semi-finished pipe are a valid component of the COP and CV data reported for November 1991. We are therefore using the COP and CV data reported for November 1991 in calculating COP and CV. However, we agree with petitioners that we should use a single weighted-average COP and CV for the POI for each product model. In doing this, we will use the monthly data from June through November to calculate the POI weighted-average COP and CV for the product models; this approach is consistent with the Department's practice. As stated in Ta Chen *Comment 2*, we consider the date of sale as determinative for matching COP and CV, therefore, in calculating the weighted-average values for the POI, we will weight the monthly COP data reported by the quantity of home market sales based on the date of sale, and the monthly CV data reported by the quantity of U.S. sales, based on the date of sale.

Comment 12: Ta Chen asserts that it properly allocated indirect material costs, stating that dividing indirect material costs by the total of materials in transit instead of material requisitions is correct. Ta Chen maintains the rate derived by this allocation should be applied to material requisitions because indirect material cost is incurred when material is imported, not when it is requisitioned.

Petitioners argue that Ta Chen is in error and that the calculation of material variance should be corrected by

disallowing an incorrect indirect materials adjustment.

DOC Position

The Department disagrees, in principle with Ta Chen's use of one base to allocate indirect material costs, and then applying the resulting rate to a different base. However, we are allowing its use as an estimation because the net difference is immaterial.

Comment 13: Ta Chen maintains that home market prices should be reduced by the amount of Taiwan import duty paid on specific sales. Ta Chen maintains that the Department has treated the import duties as a circumstance-of-sale adjustment by reducing home market prices, rather than as an adjustment to the U.S. price, citing Antifriction Bearings Other Than Tapered Roller Bearings from France, et al., 57 FR 28360, 28397 (*Comment 6*) (June 24, 1992). Alternately, Ta Chen states that the Department should consider adjusting the U.S. price upwards by the average import duty paid on home market sales. Ta Chen states that its situation is analogous to that of Thai respondents in Ball Bearings from Thailand 54 FR 19117-19119 (May 3, 1989), in that it too is a customs-bonded factory which is exempt from import duties for products to be exported, but becomes liable for such import duties for some, but not all, sales made in the domestic market.

Petitioners maintain that if the Department makes any adjustment to either home market or U.S. prices to account for import duties paid in the home market but exempted for U.S. sales, then the Department should also add an appropriate amount for import duties to Ta Chen's cost of production, as they maintain that Ta Chen reported an average import duty for CV, but not for COP.

DOC Position

We agree with petitioners. Ta Chen reported that it considered import duty as the only home market direct selling expense and that direct selling expenses were reported in the section B sales listing but not in its COP response. We are, therefore, adding to cost of manufacturing (COM) the weighted-average import duty paid on raw materials for home market sales, in calculating CV. We are adding the actual duty paid on the raw materials for a home market sale to the COP which is compared to that sale. In addition, we are adjusting U.S. price by adding the weighted-average import duties paid on home market sales but exempted for sales to the United States.

Comment 14: Ta Chen maintains that the indirect selling expenses of its U.S. subsidiary, TCI, should be divided by a total sales value which includes sales facilitated by TCI but not recorded in its books. Ta Chen asserts that the customer correspondence files it keeps and the commissions it earns on facilitating these sales, indicate that these form the proper total sales for which TCI incurred selling expenses in its normal operations.

DOC Position

We disagree with respondent. Since these expenses are incurred on what would normally be considered purchase price sales, and since Ta Chen considers and records the revenue from these sales as revenue earned by Ta Chen Taiwan, not by TCI, these sales should not be included in the denominator for allocation of the TCI selling expenses.

Comment 15: Ta Chen maintains that the warranty expense calculated in the preliminary determination from the recorded export losses was incorrectly allocated, thereby overstating the cost.

Petitioners contend that the Department should allocate the export loss that Ta Chen incurred for its U.S. sales of the subject merchandise based on total sales of WSSP to the United States during the POI.

DOC Position

We agree with petitioners. We are allocating export losses on U.S. sales, plus the cost incurred for returning goods to TCI, over the total value of U.S. sales during the POI. We are making this allocation as BIA for unreported warranty and other export expenses incurred on U.S. sales where merchandise was later found to be defective.

Comment 16: Ta Chen maintains that the Department should reduce the U.S. inland freight costs for shipments to the South Carolina warehouse by the amount for which TCI was liable but had not been billed. Ta Chen maintains that the Department verified that the smaller amount was the amount billed and paid.

DOC Position

We disagree with Ta Chen. Such corrections should have been made by respondent on the last tape submitted to the Department before verification. Furthermore, given that the request to make these changes was made so late in the proceedings, the Department can not be responsible for correcting Ta Chen's conservative estimates.

Comment 17: Ta Chen maintains that the Department verified that for certain U.S. bank charges, Ta Chen had

conservatively reported estimated charges and that it was demonstrated that the actual charges, when billed, were lower than the estimated amounts. Ta Chen asserts that the Department should modify its calculations to take this into account.

DOC Position

We disagree with Ta Chen. Such corrections should have been made by respondent to the last tape submitted to the Department before verification. Furthermore, given that the request to make these changes was made so late in the proceedings, the Department can not be responsible for correcting Ta Chen's conservative estimates.

Comment 18: Ta Chen asserts that despite the fact that ESP merchandise is stocked both in Taiwan and U.S. inventory, the home market rate should be used to calculate imputed inventory carrying costs for 120 days of the entire period from production to shipment from U.S. warehouse to the final customer. Ta Chen maintains this rate is correct because TCI pays Ta Chen 120 days after shipment of pipe from Ta Chen to TCI; thus the parent company bears the cost of carrying the inventory for those 120 days.

DOC Position

We disagree with Ta Chen. Ta Chen had calculated several different ESP inventory carrying costs based on several different warehouses used for stocking ESP inventory. In all calculations Ta Chen added together the average time products were in inventory in Taiwan, plus the average days en route, plus the average time inventoried in the U.S. warehouse used for the specific transactions and then applied the average home market short-term interest rate. We are recalculating the inventory carrying cost using the home market interest rate for the days products are stored in Taiwan inventory and the U.S. interest rate for the days en route and the time spent in U.S. storage; the physical location is indicative here of the company branch assuming the inventory carrying costs; thus the home market interest rate is applied only to the period the subject merchandise is physically in Taiwan inventory, and the U.S. short-term interest rate is applied to the remaining company inventory period.

Comment 19: Ta Chen maintains that the use of employee estimates for allocation of packing labor expenses and for the allocation of usage of its own trucks constitute the best possible approach available to the company. Ta Chen argues, that, since it kept no records from which to make the

allocations, its only choices were to use employee estimates or, less satisfactorily, to divide these expenses by the verified total quantity of pipe and fittings shipped during the POI.

Petitioners contend that Ta Chen has acknowledged that it could not document the estimates used of packing labor and trucking expenses. Petitioners conclude that the Department should reject the use of employee estimates without supporting records and urge the Department to allocate the entirety of the expenses recorded to U.S. sales only, as BIA.

DOC Position

We disagree with petitioners. Given that Ta Chen's record-keeping in the normal course of business did not identify the usage rates for packing labor and trucking based on product type and destination, Ta Chen's methodology was the best estimate possible.

Comment 20: Ta Chen states that it has no objection to the allocation of packing and storage costs used by an unrelated party to bill Ta Chen. Ta Chen notes that the party is not only unrelated to Ta Chen but is also an adverse party to Ta Chen in a different proceeding before the Department.

DOC Position

The Department notes Ta Chen's statement and continues to use the reported costs based on this unrelated party's allocation of its storage and packing costs in its billing Ta Chen.

Yeun Chyang Industrial Co., Ltd.

Comment 1: Petitioners maintain that YCI's final determination of less-than-fair-value sales should be based entirely upon BIA. Because petitioners maintain that YCI has not cooperated with the Department, they argue that the BIA rate assigned should be the most adverse rate supported by the record. Petitioners maintain that despite having had an unusually lengthy period to prepare for verification, YCI nonetheless was not ready for either the cost or sales portions of verification and did not cooperate with the Department's representatives at verification. Petitioners cite the sales verification report to highlight deficiencies which include lack of preparation of documents, failure to provide requested documents to the verifiers, a failure to provide documentation of the completeness of the total volume and value of sales reported, incorrect allocations of expenses, inability to collect information in a timely manner. Petitioners cite the cost verification

report to highlight deficiencies which include the differences between the company accounting practices reported and those discovered at verification, the fact that the DOC accountant reconciled the total cost of materials without any prepared documentation, and the unsupported direct labor hours reported by YCI which could not be verified because documentation had been destroyed prior to verification.

YCI counters with the claim that the Department has verified all of the information necessary to calculate an accurate dumping margin. YCI maintains that it is unfair and improper to apply BIA to unverified information because the reason any information was not verified was lack of sufficient time for verification, not because YCI was inadequately prepared for verification. YCI maintains that the Department should have extended verification by an extra day, and claims that the verifiers should have stayed later each evening. It maintains that the longer verification at Ta Chen/TCI was conducted at its expense.

YCI claims that even if the Department considers BIA necessary, it should not use the most adverse BIA rate. It maintains that the most adverse rate is only valid as a punitive measure against uncooperative respondents and that lack of preparation in advance of verification does not constitute uncooperative behavior. YCI maintains that it did not fully prepare for verification because of the complexity of the investigation, language barriers, the company's inexperience with antidumping proceedings, and a genuine misunderstanding and misinterpretation of the verification agenda. YCI claims that the Department's verifiers did not manage their time in the most constructive manner and that this, not lack of preparedness on YCI's part, was the primary cause of delays and problems.

YCI further argues that, even if the Department determines that YCI is responsible for serious deficiencies in the verification, recent decisions such as Roller Chain, Other Than Bicycle, from Japan, 57 FR 6808 (1992), and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain components thereof from Japan, 56 FR 65228, indicate that the Department should find the company cooperative and use non-punitive BIA, such as the highest rate among other respondents. YCI also states that in Portable Electric Typewriters from Japan, 56 FR 56393, 56394, (1991), the Department gave a respondent who submitted no responses to the Department punitive BIA and

gave a respondent who only made partial responses to the Department non-punitive BIA. In addition, YCI points to the administrative review of Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Germany, 56 FR 31692, in which a non-punitive BIA was used for both a firm whose sales listing was flawed and to a firm whose cost data was not substantiated at verification; YCI further maintains that Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 42961 (1992) indicates that non-punitive BIA is appropriate if "verification revealed significant inconsistencies in the information reported * * *". Lastly, YCI states that, despite announcing a new BIA hierarchy in Antifriction Bearings in July 1991, the Department nonetheless chose to use a non-punitive BIA for totally non-cooperative companies in Color Television Receivers, Except for Video Monitors, From Taiwan, 56 FR 65218, 65227, (1991) and in Roller Chain from Japan, 56 FR 32175, 32176, (1991).

DOC Position

We agree with petitioners. As noted in the YCI sales verification report, the DOC team encountered serious obstacles to conducting verification, due to a general lack of preparedness on the part of the respondent. With the exception of the pre-selected sales, no documents had been prepared in advance of verification. Even the preselected sales documents had not been copied and translated.

YCI's submissions to the Department had serious and numerous deficiencies. As a result, the Department was particularly concerned about the preparations YCI would undertake for verification. Thus, in our July 22, 1992, verification agenda letter, we specifically requested that YCI provide the Department with worksheets to reconcile total quantity and value of sales by July 29, 1992. YCI not only failed to provide the worksheets prior to verification, but also failed to have them available at the start of verification. After spending much of the first day reexplaining to YCI what the verification proceeding entailed, the verification team gave YCI officials a list of documents that needed to be reviewed at a minimum. A copy of this list was sent with a cover memorandum by facsimile to the Department on August 10, 1992.

Company officials explained that they had expected the team to construct the paper trail for volume and value completeness directly from the submitted sales listings. We instructed the company that it must collect the

necessary documents and prepare a worksheet which could be both analyzed and tested for accuracy and completeness. A worksheet was given to the team at 9 a.m. on the third day of verification, whereupon we discovered a major error in the U.S. sales portion of the worksheet. Reconciliation of each of the separate accounts listed on that worksheet was questionable given that the numbers were *made* to reconcile on the first version of the worksheet by adjusting the value of home market non-subject merchandise based on the total rather than totalling and preparing all sections so that each was individually vouched for. A second worksheet was provided at 4:30 p.m. on the final day of verification. Due to the impeded progress of the verification, we were not able to examine each account, *i.e.*, U.S., home market, third country, to confirm that each account's value and volume reconciled to the second market worksheet provided.

In addition, the team found numerous clerical and methodological errors in the documents which the company prepared by the end of verification. Such errors affected date of shipment, date of payment, foreign inland freight, and home market interest rates. Due to the slow progress caused by YCI's lack of preparation, many documents, such as those for duty drawback, foreign brokerage, inventory carrying costs, indirect selling expenses, commissions, U.S. discounts, U.S. inland freight, and marine insurance, could not be examined.

As noted in the September 8, 1992, cost verification report, we also encountered major problems in attempting to verify the respondent's cost of production and constructed value data, including a lack of preparation, missing documentation, and limited access to company personnel. As a result of these problems, the cost of manufacturing, general and administrative expenses, and the company profit margin could not be verified. Substantial differences were found in the accounting methodologies employed in the responses to section D and the actual company accounting records examined at verification. The direct labor cost and factor overhead costs could not be verified because YCI discarded the source of documents after preparing its section D response. Additionally, the labor cost differences discovered at verification could not be explained.

YCI had sufficient time to prepare thoroughly for verification. The preliminary determination in this case was postponed, and YCI requested and

received a three-week postponement of its verification. YCI received detailed verification agendas from both the sales and accounting verifiers. As numerous memoranda to the file attest, the Department answered YCI's questions concerning the investigatory proceedings. On April 3, 1991, the Department even created a sample product concordance to illustrate to YCI how to report differences in merchandise. YCI was given the opportunity to correct its submissions up to the seventh day before its scheduled verification, a deadline to which petitioners had strenuously objected.

Considering the number and nature of the problems encountered in attempting to verify YCI, and the extensive opportunities YCI had to prepare for verification, YCI has by any objective measure failed verification. Because of the degree to which YCI was unprepared for verification, including YCI's failure to comply with specific Departmental instructions, the Department finds YCI uncooperative.

The Department has the discretion to determine the length of verification according to many factors, including, but not limited to, the complexity and volume of the data to be examined, the number of locations to be visited, and the degree of preparation and cooperation evidenced by the respondent. YCI fallaciously compares its verification schedule to that of Ta Chen. Ta Chen requested separate sales and cost verification dates. In contrast, at the June 24, 1992, disclosure of the preliminary calculations to YCI when both the Department analyst and the Department staff accountant asked YCI's representatives if simultaneous verifications would pose any complications, YCI stated that no complications were foreseen.

Furthermore, Ta Chen had both purchase price and ESP sales; some of the purchase price sales were fully documented in Taiwan, others were documented partly in Taiwan and partly in California. The complexity and volume of the sales data engendered by three methods of U.S. sales documentation necessitated a longer verification. There were no such circumstances warranting an extended verification of YCI.

In addition, while YCI had failed to prepare, copy, and translate the vast majority of the documentation listed in the Department's verification agenda, Ta Chen had adequately done so. Lastly, the Department cut short the first day of verification at Ta Chen because the senior verifier became ill and had to leave the verification site. Longer hours over the remaining days of verification

proceedings were due, in part, to the complexity of the documentation prepared by Ta Chen, and in part to time lost on the first day.

The degree to which YCI was unprepared for verification and the nature and extent of the information which verification revealed to be incorrect and/or incomplete constitute uncooperative behavior on the part of a respondent. Therefore, the Department is using the highest rate in the petition, 31.9 percent, as BIA for the final determination.

Petitioners and YCI had further company-specific comments which are moot because BIA is being applied in determining YCI's final antidumping duty margin.

Continuation of Suspension of Liquidation

In accordance with section 735 of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of WSSP produced or exported from Taiwan by Ta Chen, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. In accordance with section 735 of the Act, and with section 353.16(d) of the Department's regulations, we are directing the Customs Service to suspend liquidation of all entries of WSSP produced or exported from Taiwan by JYE and YCI, that are entered, or withdrawn from warehouse, for consumption on or after March 14, 1992, which is the date 90 days prior to the publication of our preliminary determination. We are not ordering suspension of liquidation of entries of WSSP produced by CTI. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chang Tieh Industry Co., Ltd.....	0.00
Jaung Yuann Enterprise Co., Ltd.....	31.90
Ta Chen Stainless Pipe Co., Ltd.....	3.51
Yeu Chyang Industrial Co., Ltd.....	31.90
All Others.....	19.94

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: November 4, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-27411 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Changes to Public Meetings Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A notice of, and the agenda for, public meetings of the Gulf of Mexico Fishery Management Council and its Committees were published in the *Federal Register* at 57 FR 48510 on October 26, 1992. Recent actions require a revision of the information contained in the prior notice. These changes are noted below; all other information originally published on October 26, 1992, remains unchanged.

Changes

Council meeting: Due to partial rejection on Shrimp Amendment #6, public testimony has now been scheduled on Amendment #6 along with the Reef Fish testimony.

Committee meetings: The Budget Committee meeting has been canceled, and the scheduled time for the Committees to convene has been changed to 2 p.m. (formerly 1 p.m.), with adjournment at 5:30 p.m. on November 16, 1992.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: November 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.

[FR Doc. 92-27334 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Request for modification to scientific research permit No. 663 (P36B).

Notice is hereby given that Mr. Salvatore Cerchio, Moss Landing Marine Laboratories, Moss Landing, CA 95039-0450, has requested a modification to Permit No. 63 (P36b) issued pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the Regulations Governing Endangered Species (50 CFR parts 217-222).

Permit No. 663 was issued on February 21 1989 (54 FR 8231) and subsequently modified on January 11, 1990 (55 FR 1861), January 30, 1991 (56 FR 4601), and November 4, 1991 (56 FR 57516). It authorizes the inadvertent harassment of up to 600 humpback whales (*Megaptera novaeangliae*) annually off the coast of Kauai County, Hawaii during photo-identification studies over a five-year period. The permittee is requesting that the permit be modified to: Include the Big Island and Hawaii in the authorized study area; allow underwater photography; and increase the number of whales authorized to be inadvertently harassed under the permit to 1000 annually.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy, room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All

statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above publication are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources,
National Marine Fisheries Service,
NOAA, 1335 East-West Hwy., Suite
7324, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach Ca 90802-4213 (310/980-4016); and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822-2396 (808/955-8831).

Nancy Foster,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-27425 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11851 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased by application of swing, reducing the limit for Categories 340/640 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14388, published on April 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on November 13, 1992, you are directed to amend the directive dated April 14, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica. The Guaranteed Access Levels for Categories 340/640 and 443 remain unchanged.

Category	Adjusted twelve-month limit ¹
340/640	666,066 dozen.
443	214,000 numbers.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-27342 Filed 11-10-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE**Department of the Army****Board of Visitors, United States Military Academy**

AGENCY: United States Military Academy, Department of the Army, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 18-20 November 1992.

Place of Meeting: West Point, New York.

Start Time of Meeting: 7 p.m., 18 November.

Proposed Agenda: Update Briefing on Outcomes Assessment Methodology; Discussion of the Revised Plan; Roundtable discussion with members of the Class of 1996; Drafting of Board Conclusions and Recommendations for inclusion in the Annual Report of the 1922 Board of Visitor.

All proceedings are open. For further information, contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996-5000, telephone: (914) 938-5870.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-27300 Filed 11-10-92; 8:45 am]

BILLING CODE 3710-08-M

Deferment of Test for the Domestic Interstate Household Goods Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change.

SUMMARY: This is a notice of change to the proposed test as published in the *Federal Register* (57 FR 28842, June 29, 1992), Military Traffic Management Command, Directorate of Personal Property, CONUS Automated Rate System (CARTS) Proposed Changes.

Effective immediately the Military Traffic Management Command (MTMC) announces the deferment of test for the Domestic Interstate Household Goods Program.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP-CD, 5611 Columbia Pike, Falls Church, VA 22041-5050.

DATES: November 12, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Butler, Military Traffic Management Command, ATTN: MTPP-CD, 5611 Columbia Pike, Falls Church, VA 22041-5050, telephone (703) 756-1190.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) FY93 Appropriations Act, section 9133, states: "None of the funds provided in this Act may be obligated to implement any test of changes in the Department's domestic interstate household goods program as proposed in the *Federal Register* (57 FR 28842)." Accordingly, the test previously announced by the Military Traffic Management Command is deferred. During this period, however, we will review and evaluate industry comments received as a result of our October 2, 1992 *Federal Register* notice (57 FR 45616).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-27529 Filed 11-10-92; 8:45 am]

BILLING CODE 3710-08-M

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patents

AGENCY: Army Armament Research, Development and Engineering Center, Picatinny Arsenal, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, the Department of the Army Armament Research, Development and Engineering Center; announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patents: U.S. Patent No. 5,124,493 entitled Improved Process of Producing HMX in 100 percent yield and purity, issued June 23, 1992, and U.S. Patent No. 5,120,887 entitled Process of Making Pure Solex issued June 9, 1992. These concern high power explosives. In addition, the following related patent applications are offered for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army. Licenses shall comply with U.S. Code 209 and 27 CFR part 404.

U.S. patent Serial No.	Title	Filing date	Docket no.
07/ 687,607.	Improved Reactor.	4/15/91.....	DAR-6-88
07/ 894,503.	Noname.....	6/5/92.....	DAR-6-88A
07/ 936,373.	An Im-proved Process.	8/28/92.....	DAR-24-91
07/ 936,374.	An Im-proved Process.	8/28/92.....	DAR-25-91

U.S. patent Serial No.	Title	Filing date	Docket no.
07/ 936,380.	An Im-proved Process.	8/28/92.....	DAR-26-91
07/ 936,372.	An Im-proved Process.	8/28/92.....	DAR-27-91
07/ 936,371.	An Im-proved Process.	8/28/92.....	DAR-28-91
07/ 936,375.	An Im-proved Process.	8/28/92.....	DAR-29-91
07/ 775,407.	Improved Process.	10/15/91.....	DAR-30-91
07/ 936,366.	An Im-proved Process.	8/18/92.....	DAR-31-91
07/ 936,387.	An Im-proved Process.	8/28/92.....	DAR-34-91
07/ 936,368.	An Im-proved Process.	8/28/92.....	DAR-35-91
07/ 810,071.	Improved Process.	12/19/91.....	DAR-48-91
07/ 936,370.	Improved Process.	8/28/92.....	DAR-13-92

FOR FURTHER INFORMATION CONTACT:

Mr. Edward Goldberg, Chief Patent Counsel, SMCAR-GCL, U.S. Army ARDEC, Picatinny Arsenal, New Jersey 07806-5000, Telephone: (201) 724-6590.

DATES: Written objections must be filed by December 14, 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-27299 Filed 11-10-92; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army**Regulatory Guidance Letters Issued by the Corps of Engineers**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RGL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR 320-330) to its division and district engineers. The Corps of Engineers publishes RGL's in the *Federal Register* upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT:

Mr. Sam Collinson, Regulatory Branch,
Office of the Chief of Engineers at (202)
272-1782.

SUPPLEMENTARY INFORMATION: RGL 92-04, Subject: Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits, is hereby published as follows:

John P. Elmore,

Chief, Operations, Construction and
Readiness Division, Directorate of Civil
Works.

CECW-OR**Subject**

Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide additional guidance and clarification for divisions and districts involved in developing acceptable conditions under the section 401 Water Quality Certifications and Coastal Zone Management Act (CZM) concurrences for the Nationwide Permit (NWP) Program. This RGL represents a clarification of §§ 340.4(c)(2) and (3) and 330.4(d)(2) and (3), concerning when NWP section 401 and CZM conditions should not be accepted and thus treated as a denial without prejudice. The principles contained in this RGL also apply to 401 certification and CZM concurrence conditions associated with individual permits and regional general permits.

2. Corps divisions and districts should work closely and cooperatively with the States to develop reasonable 401 and CZM conditions. All involved parties should participate in achieving the purpose of the NWP program, which is to provide the public with an expeditious permitting process while, at the same time, safeguarding the environment by only authorizing activities which result in no more than minimal individual and cumulative adverse effects. When a State certifying agency or CZM agency proposes conditions, the division engineer is responsible for determining whether 401 Water Quality Certification or CZM concurrence conditions are acceptable and comply with the provisions of 33 CFR 325.4. In most cases it is expected that the conditions will be acceptable and the division engineer shall recognize these conditions as regional conditions of the NWP's.

3. *Unacceptable Conditions:* There will be cases when certain conditions will clearly be unacceptable and those conditioned 401 certifications of CZM

concurrences shall be considered administratively denied. Consequently, authorization for an activity which meets the terms and conditions of such NWP(s) is denied without prejudice.

a. Illegal conditions are clearly unacceptable. Illegal conditions would result in violation of a law or regulation, or would require an illegal action. For example, a condition which would require an applicant to obtain a 401 certification or CZM concurrence, where the State has previously denied certification or concurrence, prior to submitting a predischARGE notification (PDN) to the Corps in accordance with PDN procedures, would violate the Corps regulation at 33 CFR 330.4(c)(6). Another example would be a case where an applicant would be required, through a condition, to apply for an individual Department of the Army permit. Another example is a requirement by the State agency to utilize the 1989 Federal wetland Delineation Manual to establish jurisdiction.

b. As a general rule, a condition that would require the Corps or another Federal agency to take an action which we would not otherwise take and do not choose to take, would be clearly unacceptable. For example, where the certification or concurrence is conditioned to require a PDN, where the proposed activity did not previously require a PDN, the Corps should not accept that condition, since implicitly the Corps would have to accept and utilize the PDN. Another example would be a situation where the U.S. Fish and Wildlife Service is required, through a condition, to provide any type of formal review or approval.

c. Section 401 or CZM conditions which provide for limits (quantities, dimension, etc.) different from those imposed by the NWP do not change the NWP limits.

1. Higher limits are clearly not acceptable. For example, increasing NWP 18 for minor discharges from 10 to 50 cubic yards would not be acceptable. Such conditions would confuse the regulated public and could contribute to violations.

2. Lower limits are acceptable but have the effect of denial without prejudice of those activities that are higher than the Section 401 or CZM condition limit but within the NWP limit. Thus, if an applicant obtains an individual 401 water quality certification and/or CZM concurrence for work within the limits of an NWP where the State had denied certification and/or CZM concurrence, then the activity could be authorized by the NWP.

d. A condition which would delete, modify, or reduce NWP conditions would be clearly unacceptable.

4. *Discretionary Enforcement:* The initiation of enforcement actions by the Corps, whether directed at unauthorized activities or to ensure compliance with permit conditions, is discretionary. The district engineer will consider the following situations when determining whether to enforce 401 and/or CZM conditions.

a. *Unenforceable Conditions*—Some conditions that a State may propose will not be reasonably enforceable by the Corps (e.g., a condition requiring compliance with the specific terms of another State permit). Provided such conditions do not violate paragraph 3 above, the conditions will be accepted by the Corps as regional conditions. However, limited Corps resources should not be utilized in an attempt to enforce compliance with 401 or CZM conditions which the district engineer believes to be essentially unenforceable, or of low enforcement priority for limited Corps resources.

b. *Enforceable Conditions*—Some other conditions proposed by a State may be considered enforceable (e.g., a condition requiring the applicant to obtain another State permit), but of low priority for Federal enforcement, since the Federal Government would not have required those conditions but for the State's requirement. Furthermore, the Corps will generally not enforce such State-imposed conditions except in very unusual cases, due to our limited personnel and financial resources.

5. *NWP Verification and PDN Responses:* In response to NWP verification requests and PDN's, district engineers should utilize the sample paragraphs presented below. This language should be used where conditional 401 certification or CZM concurrence has been issued. This specifically addresses situations when the conditions included with the certification or concurrence are such that the district engineer determines they are unenforceable or the district engineer cannot clearly determine compliance with the 401/CZM conditions (see 4.a.).

"Based on our review of your proposal to [describe proposal], we have determined that the activity qualifies for the nationwide permit authorization [insert NWP No(s.)], subject to the terms and conditions of the permit.

[Insert paragraph on any Corps required activity-specific conditions.]

Enclosed you will find a copy of the Section 401 Water Quality Certification and/or Coastal Zone Management

special conditions, which are conditions of your authorization under Nationwide Permit [insert NWP No(s.)]. If you have questions concerning compliance with the conditions of the 401 certification or Coastal Zone Management concurrence, you should contact the [insert appropriate State agency].

If you do not or cannot comply with these State Section 401 certification conditions and/or CZM conditions, then in order to be authorized by this Nationwide Permit, you must furnish this office with an individual 401 certification or Coastal Zone Management concurrence from [insert appropriate State agency], or a copy of the application to the State for such certification or concurrence, [insert "60 days" for Section 401 water quality certification, unless another reasonable period of time has been determined pursuant to 33 CFR 330.4(c)(6), or insert "six months" for CZM concurrence] after you submit it to the State agency."

6. This guidance expires 21 January 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore,

Chief, Operations, Construction Readiness Division, Directorate of Civil Works.

[FR Doc. 92-27298 Filed 11-10-92; 8:45 am]

BILLING CODE 3710-92-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on November 16, 1992. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 a.m. and terminate at 4:30 p.m. on November 16, 1992. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the Committee on current critical issues facing the Navy, basic research and technology thrusts, 1993 study topics, future board membership, and industrial manufacturing. The agenda will include briefings and discussions on new initiatives related to the Science Opportunities Program, the status of ongoing studies, potential future topics for Committee study, a self-assessment of the Committee's effectiveness, and the ManTech Program.

These briefings and discussions will contain classified information that is specifically authorized under criteria

established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, telephone number (703) 696-4870.

Dated: November 4, 1992.

Michael P. Rummel,

Lieutenant Commander, JAGC, United States Navy, Federal Register Liaison Officer.

[FR Doc. 92-27530 Filed 11-10-92; 8:45 am]

BILLING CODE 3910-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the meeting of the Executive Committee of the National Assessment Governing Board scheduled for November 19, 20, and 21, 1992, at the Sheraton Yankee Trader Beach Resort Hotel, 321 North Atlantic Boulevard, Ft. Lauderdale, Florida, as published at 57 FR 48514, October 26, 1992. The agenda for the closed portion of the Executive Committee meeting, scheduled for November 19, between 9 p.m. and 9:30 p.m., will include discussion of the implementation of personnel policy recommendations set out in the Memorandum of Understanding. The Committee will discuss staff members, their performance, and whether their salaries should be increased or decreased. This discussion will relate solely to the internal personnel rules and practices of an agency and is protected by exemption (2) of section 552b(c) of title 5 U.S.C.

A summary of the activities of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting.

Dated: November 6, 1992.

Roy Truby,

Executive Director.

[FR Doc. 92-27341 Filed 11-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Holcomb-Naselle 115-kV Line to Valley Substation Tap Line Floodplain and Wetlands Involvement Notification

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA and Pacific County Public Utility District (PUD) propose to construct a tap on BPA's Holcomb-Naselle 115-kV transmission line and a 700-foot tap line into Pacific County PUD's existing Valley Substation near Holcomb, Pacific County, Washington. This action would involve some minor construction work in seasonally flooded wetlands and possibly the floodplain of the Willapa River.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain/wetlands assessment on this proposed action.

DATES: Any comments are due no later than November 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Taves—EFBC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, 503-230-4995. For further information on general DOE floodplain/wetlands environmental review requirements, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; 202-586-4600 or 1-800-472-2756.

SUPPLEMENTARY INFORMATION: BPA will install two disconnect switches and a tap structure for Pacific County PUD's tap line to be constructed between the tap point and Pacific County PUD's existing Valley Substation. The disconnect switches will be located at the deadend structures on either side of the Highway 6 crossing of BPA's Holcomb-Naselle 115-kV transmission

line. The tap structure will be placed next to the highway on the west side. Pacific County PUD will construct the tap line as an underbuild on existing structures paralleling the west side of the highway. It will be approximately 700 feet in length. Pacific County PUD will install a new bay for the tap line in their Valley Substation, within the previously developed area.

The National Flood Insurance Program has not published a floodplain map for this area of Pacific County. It states that the entire area is classified as Zone D—areas of undetermined, but possible, flood hazards. At least one and possibly both of the switch stands for the disconnect switches needed for the tap line will be located in wetlands. A delineation will be performed as part of the floodplain/wetlands assessment to determine the actual extent of the wetlands involvement. The wetlands are located along the Willapa River in section 50, Township 13 North, Range 8 West. It does not appear that there are alternatives to placing the switch stands which would both avoid wetlands and meet safety and operational criteria since the existing structures on which the switch stands must be placed are already located in wetlands.

If the project can be categorically excluded from further National Environmental Policy Act review, the results of the floodplain/wetlands assessment will be included in the categorical exclusion and the floodplain statement of findings will be published in the **Federal Register**. If the project requires an environmental assessment or an environmental impact statement, the floodplain/wetlands assessment will be included in the appropriate environmental document and the floodplain statement of findings will be included in the Finding of No Significant Impact or the final environmental impact statement. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on November 2, 1992.

Jack Robertson,

Deputy Administrator, Bonneville Power Administration.

[FR Doc. 92-27384 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Economic Analysis and Modeling Related to Energy.

Date and Time: Monday, November 23, 1992, 10 a.m.–5 p.m.

Place: National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401-3393.

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7092.

Purpose: The Task Force will advise the Department of Energy on how economic models and tools of analysis can better be used to address issues of energy policy by developing recommendations to clarify analytical needs, facilitate communication between DOE analysts and policy makers, and create institutions within DOE that accumulate knowledge gained through the policy making process.

Tentative Agenda

Monday, November 23, 1992, 10 a.m.–5 p.m.
10 a.m. Call to Order and Introductions;

Welcoming Remarks

10:05 a.m. Discussion of Draft Final Report
12 p.m. Lunch

1:30 p.m. Presentations on Progress of Fuel Cycle Review

1:45 p.m. Discussion of Fuel Cycle Review

2:30 p.m. Discussion of Final Report

3 p.m. Break

3:15 p.m. Discussion of Other Task Force Business

4:45 p.m. Public Comment (10-minute rule)
5 p.m. Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 5 p.m. (E.S.T.) Tuesday, November 17, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations. This notice is being published less than 15 days in advance of the meeting due to difficulties in arranging a day and place for the meeting.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.S.T.) Tuesday, November 17, 1992, to assure that it is considered by Board members during the meeting.

Minutes: Minutes of the meeting will be available for public review and

copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: November 6, 1992

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-27388 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M#

Federal Energy Regulatory Commission

[Project No. 460-001]

Environmental Impact Statement and Conduct Public Scoping Meetings; Tacoma Public Utilities

November 5, 1992.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the Cushman Power Project No. 460. The hydropower project is located on the Skokomish River in Mason the Pierce Counties, Washington.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings. The evening scoping meeting is primarily for public input while the morning meeting will focus primarily on government agencies' concerns. All interested individuals, representatives of organizations and agencies are invited to attend and assist the staff in identifying the scope of

environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list. Copies of the preliminary scoping document will also be available at the scoping meetings.

The scoping meetings will be held on Thursday, December 10, 1992. The morning meeting, focusing on primarily government agencies' concerns, will be held from 9 a.m. to 12 p.m., in room 1612 of the Library/Clock Tower Building on the campus of Evergreen College. The College is located about 5 miles west of Olympia, Washington off U.S. Highway 101. The second meeting will be from 7 p.m. to 10 p.m., in the Hoodspout Community Hall, behind Fire Station #1 in Hoodspout, Washington. The Community Center Building is located on Finch Creek Road, 2 blocks west of U.S. Highway 101. This meeting will focus primarily on general public concerns.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Cushman Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, representatives of organizations and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the

issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until January 10, 1993.

All correspondence should clearly show the following caption on the first page: Cushman Project No. 460, Washington.

All those that are formally recognized by the Commission as intervenors in the Cushman Project proceeding are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information please contact John Blair at (202) 219-2845.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27331 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-00612T Oklahoma-29]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 5, 1992

Take notice that on November 3, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the formation designated as the Red Fork Common Source of Supply, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The formation is described as being that interval found from 12,040 feet to 12,525 feet, underlying Sections 26, 27, 28, 33, 34, and 35, Township 12 North, Range 13 West and Sections 1, 2 and 3, Township 11 North, Range 13 West, Caddo County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27323 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-00699T Texas-86]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 4, 1992

Take notice that on November 3, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Pandango Formation underlying Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area contains approximately 11,850 acres and is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Pandango Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

The recommended portion of the Pandango Formation is located in Duval County, Texas, within Railroad Commission District 4 and includes all or a portion of the following surveys:

Abstract	Survey name
A-1790	Henry M. Scott.
A-1981	W.H. Brooks.
A-71	B.S. & F.
A-2111	Jno. F. Sinclair.
A-23	A.B. & M.
A-725	G.B. & C.N.G. RY. Co.
A-711	J. Garcia.
A-712	G.P. Garcia.
A-1705	T.A. Cabitt.

Abstract	Survey name
A-1252	E.J. Gravis.
A-75, Less most easterly 1,850' of Survey.	
A-1207	Narwick B. Gussett.
A-523	S.A. & M.G.R.R.
A-693	C.C. Ditch Co.
A-1251	E.J. Gravis.
A-1205	N.B. Gussett.
A-345	L. Munoz.
A-385	J. Poitevent.
A-1163	G.J. Reynolds.
A-1165, Less most easterly 1,900' of survey.	G.J. Reynolds.
A-263	J.H. Gibson.
A-726	G.B. & C.N.G. RY. Co.
A-1698	W.H. Brooks.
A-727, Less most easterly 1,900' of survey.	G.B. & C.N.G. RY. Co.

[FR Doc. 92-27324 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI93-5-000]

**Application for Blanket Certificate
With Pregranted Abandonment;
BridgeGas U.S.A. Inc.**

November 4, 1992.

Take notice that on October 30, 1992, BridgeGas U.S.A. Inc. (BridgeGas) filed an application under section 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. The application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before November 19, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised,

BridgeGas will not have to appear or be represented at any hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27326 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-43-000]

**Application; Colorado Interstate Gas
Co.**

November 4, 1992.

Take notice that on November 2, 1992, Colorado Interstate Gas Company (CIG) P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-43-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two field compressor units which were authorized under its blanket certificate issued in Docket No. CP83-21/000, all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG states that a 825-horsepower compressor unit and a 1,375-horsepower compressor unit were installed at the Natural Buttes Field Compressor Station in Uintah County, Utah, on an interim basis in August and September of 1992. CIG explains that the compression was needed to handle increased gas supplies resulting from new drilling programs in the area. CIG further states that the two compressor units no longer will be required when the Uinta Basin Lateral facilities become operational,¹ projected to be around December 1, 1992. CIG thus requests that the effective date of the proposed abandonment correspond to the in-service date of the Uinta Basin Lateral. CIG advises that the 825-horsepower unit is owned by CIG and would be returned to stock for use elsewhere on CIG's system; and the leased 1,375-horsepower unit would be returned to the lessor.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants

parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-27328 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-161-010; RP91-160-008]

**Columbia Gas Transmission Corp. and
Columbia Gulf Transmission Co.;
Motion to Implement Interim
Settlement**

November 5, 1992.

Take notice that Columbia Gas Transmission Corp. (Columbia) and Columbia Gulf Transmission Co. (Columbia Gulf) on October 30, 1992, tendered for filing interim tariff sheets as shown on appendix A attached to the filing reflecting a reduction in rates, effective as of November 1, 1992.

Columbia and Columbia Gulf state that the rates shown on the tariff sheet reflect (1) a change in rate design from the Straight Fixed Variable (SFV) methodology to the Enhanced Fixed-Variable (EFV) methodology, and (2) a change in the interruptible transportation rates under Columbia Gulf's ITS-1 and ITS-2 (offshore) Rate Schedules from a 100% load factor of the applicable firm transportation service rate of a 125% load factor, both based upon the cost-of-service and throughput

¹ Certificated in Docket No. CP91-1110-000 (59 FERC ¶ 61,364).

underlying Columbia's and Columbia Gulf's currently-effective rates.

Columbia and Columbia Gulf state that the filing is being made as an integral part of a settlement reached in these dockets which will be filed on or before November 9, 1992. Columbia and Columbia Gulf also request that certain conditions be placed on the implementation of the interim rates such that (1) the companies may re-institute the SFV rates currently in effect under certain circumstances, and (2) the companies will not be placed at risk under the filed rate doctrine or any other Commission policy if the rate design for the interim period is not ultimately approved.

Columbia and Columbia Gulf request a waiver of the Commission's Regulations in order to place the tariff sheets into effect, without suspension, on less than 30 days notice.

Columbia and Columbia Gulf state that copies of the filing were served upon all of Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27315 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA93-1-2-000, and TM93-2-2-000]

East Tennessee Natural Gas Company; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

November 5, 1992.

Take notice that on November 3, 1992, East Tennessee Natural Gas Company (East Tennessee), pursuant to § 154.305(c) (4) of the Commission's regulations, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1993:

Twenty-ninth Revised Sheet No. 4
Twenty-ninth Revised Sheet No. 5

East Tennessee states that the purpose of its revisions is to institute its annual Purchased Gas Adjustment (PGA) and Transportation Cost Rate Adjustment (TCA) pursuant to sections 21 and 29 of the General Terms and Conditions of its FERC Gas Tariff. East Tennessee's filing included Purchased Gas Adjustments consisting of a demand surcharge of (\$0.37) and a commodity surcharge of \$0.0341 cents to flow through Account No. 191 over/undercollections. The tariff revisions are accompanied by a report, in paper form of the information required by FERC Form 542-PGA.

East Tennessee states that the Current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 4 and 5 consist of a (\$0.1281) per dekatherm adjustment to the gas rate and SWS summer rates and a (\$0.12) per dekatherm adjustment applicable to the demand rate. The stated adjustments reflect changes from the rates filed in Docket No. TQ93-2-2.

East Tennessee states that the Transportation Cost Rate Adjustments consist of current adjustments of \$0.05 per dekatherm to demand and \$0.0112 to commodity as well as a surcharge adjustment of \$0.0041 per dekatherm to commodity.

East Tennessee states that pursuant to the Commission's order dated August 28, 1992 in Docket No. RP92-133-000, East Tennessee is also reflecting on Sheet Nos. 4 and 5 the current GRI rate adjustments of \$0.08 per dekatherm and \$0.0147 per dekatherm applicable to the demand and commodity rates, respectively, to be effective January 1, 1993, pursuant to Section 23 of the General Terms and Conditions.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27319 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP-92-661-000]

Freeport-McMoRan Inc., and Aquila Energy Marketing Corporation, Complainants v. K N Energy, Inc., Respondent; Notice of Technical Conference

November 3, 1992

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10 a.m. on November 17, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern raised by the transfer by K N Energy, Inc. of certain facilities in Beaver and Texas Counties, Oklahoma known as the Tyrone system to GPM Gas Corporation. All interested parties are invited to attend. For additional information, interested parties may call Cristobal Hernandez at (202) 208-2266.

Lois D. Cashell,
Secretary.

[FR Doc. 92-27325 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-3-4-000 and TM93-3-4-000]

Proposed Changes in Rates and Tariff Provisions; Granite State Gas Transmission, Inc.

November 5, 1992.

Take notice that on November 2, 1992, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 filed the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness on the dates indicated:

	Proposed effective date
Twenty First Revised Sheet No. 21.	Nov. 2, 1992.
Eighth Revised Sheet No. 22	Nov. 1, 1992.
First Revised Sheet No. 134.....	Nov. 1, 1992.
First Revised Sheet No. 135.....	Nov. 1, 1992.

According to Granite State, its filing is an out-of-cycle purchased gas cost

adjustment reflecting revised projected gas costs and sales for the remainder of the fourth quarter of 1992. Granite State further states that the revised sales rates in its filing reflects an increase in its purchase gas costs related to the commencement of deliveries of up to 35,000 MMBtu from Shell Canada, Limited, on a firm basis for its system supply beginning November 1, 1992, seasonal cost increases in the Commodity charge for its purchases from Boundary Gas, Inc. and in the Demand Charge for its purchases from Tennessee Gas Pipeline Company, both effective November 1, 1992, a revision in the Transportation Cost Adjustment in its sales rates to reflect the transportation charges of Iroquois Gas Transmission, Inc., L.P., Tennessee Gas Pipeline Company and Algonquin Gas Transmission Company for the delivery of the purchases from Shell Canada, Limited, and a reduction in projected sales for the remainder of the quarter because of a reduction in the requirements of its customer, Northern Utilities, Inc.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-27322 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C193-6-000]

**Hattiesburg Industrial Gas Sales Co.
Application for Blanket Certificate
With Pregranted Abandonment;**

November 4, 1992

Take notice that on October 30, 1992, Hattiesburg Industrial Gas Sales Company (Hattiesburg) filed an application under section 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. The application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before November 19, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Hattiesburg will not have to appear or be represented at any hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-27327 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

**Natural Gas Pipeline Company of
America; Notice of Proposed Changes
in FERC Gas Tariff**

[Docket No. GT93-5-000]

November 5, 1992.

Take notice that on October 30, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing the tariff sheets listed on appendix A attached to the filing to be part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective December 1, 1992.

Natural states that tariff sheets are being submitted to reflect changes in rates and quantity entitlement associated with Natural's sales services for the Third Year of the Gas Inventory Demand Charge (GIDC) provision of the

General Terms and Conditions of its tariff.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-27314 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-18-000]

**Questar Pipeline Company; Proposed
Changes in FERC Gas Tariff**

November 5, 1992.

Take notice that Questar Pipeline Company, on November First Revised Volume No. 50 of its FERC Gas Tariff to implement revised rates to reflect transition costs incurred as a result of FERC Order No. 636. Questar submitted the following tariff sheets to be effective October 1, 1993:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7

Questar states that it will incur an estimated \$9.04 million of transition costs as a direct result of Order No. 636, and seeks full recovery of these costs in its rates for the unbundled services it will offer upon implementation of Order No. 636 restructuring.

Questar indicates that the principal elements of the transition costs are:

1. Electronic measurement and metering equipment to implement changes in Questar's service under Order No. 636 and to provide real-time electronic measurement on Questar's system.
2. The development, hardware, software and installation-related capital costs for Questar's electronic bulletin board to comply with Order No. 636.

3. The buyout of the firm service agreement with the Canyon Creek Compression Company that has become a stranded cost as a result of Questar's Order No. 636 restructuring.

4. Miscellaneous costs attributable to Order No. 636, including, but not limited to: customer-meeting costs; reporting system modification; accounting-system modifications and gas control improvements.

Copies of this filing are being served on all customers, the Utah and Wyoming Public Service Commissions, as well as each individual on the official service list maintained by the Secretary's office for Docket No. RS92-9.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27320 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

Tennessee Gas Pipeline Co.; Notice of Filing

[Docket No. RP86-119-031]

November 5, 1992.

Take notice on November 2, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to its Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 1, 1992:

Original Sheet Nos. 203 through 219
Substitute Original Sheet Nos. 203 through 205, 212, 213 and 219
Sheet Nos. 366 through 412
Original Sheet Nos. 511 and 512

Tennessee states that this filing is being made to comply with the Commission's order dated October 23, 1992 in the above referenced proceeding. In that order, the Commission directed Tennessee to refile tariff sheets to correct certain pagination errors.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspections.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27318 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-17-000]

Proposed Changes in FERC Gas Tariff; Tennessee Gas Pipeline Co.

November 5, 1992.

Take notice that on November 3, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered the following primary and alternate tariff sheets to Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective December 1, 1992.

Primary: First Revised Sheet No. 39
Original Sheet Nos. 349A through 349C
Alternate: Alternate First Revised Sheet No. 39
Alternate Original Sheet Nos. 349A through 349C

Tennessee states that this filing is made to comply with the Commission's June 25 and September 30, 1992 orders in Docket Nos. RP86-119, *et al.* and to implement an alternate take-or-pay cost recovery mechanism to collect take-or-pay costs from the only parties contesting the May 7, 1992 amended "Cosmic Settlement"—Equitable Gas Company and Equitrans, Inc.

Tennessee states that the tariff sheets under its primary proposal provide that Tennessee will allocate take-or-pay costs to Equitable because Equitable was the customer receiving service from Tennessee on October 14, 1987, the date Tennessee filed its original settlement proposal in this proceeding, and on February 8, 1988, the date of the Commission's order modifying the original settlement proposal and

approving direct billing of the take or pay costs.

Tennessee states that the tariff sheet under its alternate proposal provide that Tennessee will allocate take-or-pay costs to Equitrans on the basis that it is the successor-in-interest, as of April 1, 1988, to all of Equitable's rights, duties and obligations arising from Equitable's relationship with Tennessee. Moreover, Equitrans (as Equitable's assignee) was the customer receiving service from Tennessee in December, 1990 when Order No. 528 was issued, and Equitrans is the customer currently receiving service from Tennessee.

Texas Eastern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions and to all parties designated on the service list in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27321 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-225-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 5, 1992.

Take notice that Texas Eastern Transmission Corp. (Texas Eastern) on October 30, 1992, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Sub First Revised Sheet No. 352
Sub Original Sheet No. 359.1
Sub Second Revised Sheet No. 366
Sub First Revised Sheet No. 371
Sub First Revised Sheet No. 372
Sub First Revised Sheet No. 373

Texas Eastern states the above listed tariff sheets are being filed in compliance with the Commission's

Order Accepting and Suspending Certain Tariff Sheets Subject to Conditions, and Rejecting Certain Other Tariff Sheets issued September 30, 1992, in Docket No. RP92-225-000.

The proposed effective date of these tariff sheets is October 1, 1992.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers, interested state commissions, and all parties on the service list in Docket No. RP92-225-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27316 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-137-009]

Transcontinental Gas Pipe Line Corp.; Notice of Tariff Filing

November 5, 1992

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on October 30, 1992 certain revised tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are listed in Appendix A attached hereto. The proposed effective date of the revised tariff sheets is September 1, 1992.

TPGL states that the purpose of the filing is to comply with the Commission's "Order on Technical Conference" issued on October 5, 1992 (October 5 Order) in Docket No. RP92-137-000. Specifically, TGPL is filing to comply with ordering paragraphs (C), (d), and (F) of the October 5 Order. Such order addressed, among other issues, (i) tariff provisions regarding creditworthiness, security standards and suspension of service for nonpayment, (ii) TGPL's electric power tracker, and (iii) working capital treatment of TGPL's historical imbalances.

TGPL states that copies of the instant filing are being mailed to customers,

State Commissions and other interested parties to Docket No. RP92-137. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

A person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-27317 Filed 11-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-052]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver from the Furnace Test Procedure to Bard Manufacturing Company

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-052) granting a Waiver to Bard Manufacturing Company (Bard) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Bard its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its DCH series of condensing furnaces.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasser, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal

Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Bard has been granted a Waiver for its DCH series of condensing furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, November 5, 1992.

J. Michael Davis,
Assistant Secretary Conservation and Renewable Energy.

Decision and Order

In the Matter of: The Bard Manufacturing Company, (Case No. F-052).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which

prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Bard filed a "Petition for Waiver," dated July 29, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the *Federal Register* on August 27, 1992, Bard's petition and solicited comments, data and information respecting the petition. 57 FR 38829. Bard also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on August 24, 1992. 57 FR 38829, August 27, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC) concerning the Bard Petition. The FTC did not have any objections to the issuance of the waiver to Bard.

Assertions and Determinations

Bard's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Bard requests the allowance to test using a 60-second blower time delay when testing its DCH series of condensing furnaces. Bard states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-

minute delay. Bard indicates that it is unable to take advantage of any of these exceptions for its DCH series of condensing furnaces.

Since the blower controls incorporated on the Bard furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Bard DCH series of condensing furnaces.

Accordingly, with regard to testing the DCH series of gas furnaces, today's Decision and Order exempts Bard from the existing provisions regarding blower controls and allows testing with the 60-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Bard Manufacturing Company (Case No. F-052) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Bard Manufacturing Company shall be permitted to test its DCH series of condensing furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(1) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, and 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t^-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature

safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t^-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Bard Manufacturing Company shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the DCH series of condensing furnaces manufactured by Bard Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary material submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 5, 1992, this Waiver supersedes the Interim Waiver granted the Bard Manufacturing Company on August 24, 1992. 57 FR 38829, August 27, 1992 (Case No. F-052).

Issued in Washington, DC, November 5, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-27389 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M

[Case NO. CAC-006]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waivers From Central Air Conditioner Test Procedure to Enviro Master International

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC-006) granting two Waivers to Enviro Master International (EMI) from the existing Department of Energy (DOE) central air conditioning test procedure relating to

testing of EMI's ductless split system single-zone central air conditioner heat pumps series CHB and multizone central air conditioner heat pumps series MC/MH.

The first Waiver grants EMI's petition that it not be required to rate its ductless split system central air conditioner heat pumps, series CHB and MC/MH, in the heating mode because the models specified do not operate at temperatures below 35°F and do not have defrost control. The second Waiver grants EMI's petition to use a modified test in order to test the EMI series MC/MH multizone systems in the cooling mode since the existing DOE test procedure does not provide for test of systems with three or four compressors as manufactured by EMI in its series MC/MH systems.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-5778.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(1) notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, EMI has been granted a Waiver exempting its ductless split system central air conditioner heat pumps, series CHB and MC/MH, from the requirement to be rated in the heating mode and a second Waiver permitting use of a modified DOE test procedure to rate the EMI series MC/MH multizone systems in the cooling mode.

Issued in Washington, DC, November 5, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

In the matter of: Enviro Master International, (Case No. CAC-006).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National

Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basis model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On December 3, 1991, EMI submitted a petition for Waiver under 430.27 of 10 CFR part 430, and on January 19, 1992, EMI submitted an Application for an Interim Waiver of the heating mode tests in DOE's central air conditioner

test procedure in accordance with 430.27(g). In a separate letter dated March 18, 1992, EMI requested Interim and Permanent Waivers to portions of the cooling mode test for multizone systems found in the central air conditioner test procedure. Additional information relating to these petitions, as requested by DOE, was provided by EMI in letters dated December 4, 1991, January 27, and February 25, 1992. DOE published notice of the two EMI Petitions for Waiver in the *Federal Register* on June 15, 1992, and solicited comments, data and information respecting the petitions. 57 FR 26659. DOE granted EMI's Applications for Interim Waiver on June 9, 1992. 57 FR 26659.

Comments concerning the Petition for Waiver from the requirement to determine an Heating Seasonal Performance Factor (HSPF) were received from the California Energy Commission (CEC). CEC disagreed with the proposed waiver of the requirement to determine an HSPF rating for the EMI CHB and MC/MH series systems. DOE consulted with the Federal Trade Commission (FTC) concerning the EMI Petitions. The FTC did not have any objections to the issuance of the Waivers to EMI.

Assertions and Determinations

EMI's first Petition seeks a Waiver from the DOE requirement to determine an HSPF value for EMI's CHB and MC/MH series systems. These heat pumps have a heating mode low temperature limit of approximately 35°F and no defrost cycle. The inability to operate the basic models for the low temperature test at 17°F and the frost accumulation test at 35°F makes determination of an HSPF value impossible.

In its comments, CEC expressed concern that the HSPF standard mandated by Congress has been waived, merely because the product has been designed without the capability of working at such low temperatures. CEC proposed that a modified test procedure be used to determine an HSPF.

The test values determined by the low temperature and frost accumulation tests are required in order to calculate the HSPF value for a heat pump. Testing a heat pump under conditions other than those prescribed in the DOE test procedure or changing the method of calculating the HSPF value will yield a performance factor which is not comparable to the HSPF values determined for heat pumps tested in accordance with the DOE test. Therefore, DOE agrees with EMI that

HSPF values cannot be determined for EMI's CHB and MC/MH series systems.

Thus, DOE is granting a waiver of the requirement to test EMI's CHB and MC/MH series systems in the heating mode. Accordingly, with regard to testing of the EMI model series CHB and MC/MH, today's Decision and Order exempts EMI from the requirement to determine the Heating Seasonal Performance Factor. Printed material containing information about this product, such as catalogs and advertisements, must state that no HSPF value has been measured since the heat pump cannot be operated at temperatures below 35°F.

In the second Petition, EMI seeks to test its three and four zone MC/MH series systems in the manner prescribed in the DOE test for two zone systems. Current DOE test procedures only provide for testing of systems with one and two zones. For this reason, DOE concurs that a waiver should be granted to allow testing of the EMI MC/MH model series three and four zone systems. Accordingly, with regard to testing of the EMI model series MC/MH, today's Decision and Order permits testing of the three and four zone systems in the same manner prescribed in the DOE test procedure for one and two zone systems.

It is therefore ordered that:

(1) The Petitions for Waiver filed by Enviro Master International (Case No. CAC-006) are hereby granted as set forth in paragraphs (2) and (3) below, subject to the provisions of paragraphs (4), (5) and (6).

(2) EMI is not required to test its model series CHB and MC/MH heat pumps in the heating mode. EMI is required to state in all printed material containing information about this product, such as catalogs and advertisements, that no HSPF value has been measured for this heat pump since it cannot be operated at temperatures below 35°F.

(3) Notwithstanding any contrary provisions of appendix M of 10 CFR part 430, subpart B, Enviro Master International shall be permitted to test its MC/MH heat pumps in the cooling mode on the basis of the test procedure specific in appendix M of 10 CFR part 430, subpart B, with the modification set forth below:

(i) Sections 3.1.7. Testing conditions for split-type ductless systems, shall be modified by adding the following:

"Subsystems of multizone split-type ductless systems shall be tested as a single system. The system energy efficiency shall be based on the sum of the measured capacities of all of the zones in the system divided by the total input power used by the subsystem compressors, outdoor fans, indoor air

handlers and any additional power used by the system."

(4) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the model series CHB and MC/MH heat pumps manufactured by Enviro Master International.

(5) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(6) Effective November 5, 1992, this Waiver supersedes the Interim Waivers granted Enviro Master International on June 9, 1992 (Case No. CAC-006).

Issued in Washington, DC, November 5, 1992.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-27390 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Extension of Time For Response to Notice Pertaining to Upgrade of Wolf Creek Hydropower Project

AGENCY: Southeastern Power Administration, Department of Energy.
ACTION: Notice.

A Notice of Intent to Select Financial Sponsor and Intent To Formulate Power Marketing Policy to market additional capacity from the upgrade of the Wolf Creek Hydropower Project, Russell County, Kentucky, was published in the *Federal Register* on September 30, 1992, (57 FR 45052).

Responses to this notice were requested prior to November 30, 1992. A month's extension of this response period has been requested by an interested party. Based on this request, the response period has been extended and submissions concerning the above stated notice shall be made no later than December 31, 1992.

Issued in Elberton, Georgia, October 22, 1992.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 92-27391 Filed 11-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4532-9]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement Proposals for Review

The following draft documents, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, are now available for public review:

- Baywide Fishery Management Plan for Black Drum.
- Baywide Fishery Management Plan for Red Drum.
- Ecologically Valuable Species Strategy.

Public comments will be accepted through December 16, 1992. Comments on the Black Drum Management Plan should be sent to Lewis Gillingham Virginia Marine Resources Commission, Division of Fisheries Management, P.O. Box 756, Newport News, Virginia 23607-0756; comments on the Red Drum Management Plan should be sent to David Boyd, Virginia Marine Resources Commission, Division of Fisheries Management, P.O. Box 756, Newport News, Virginia 23607-0756; comments on the Ecologically Valuable Species Strategy should be sent to Dr. Steve Jordan, Maryland Department of Natural Resources, 904 S. Morris Street, Oxford, Maryland 21654.

To obtain copies of the draft plans, call Carin Bisland, EPA Chesapeake Bay Program Office, 800/523-2281.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 92-27399 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4530-4]

Public Water System Supervision Program: Program Revision for the State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved State Public Water System Supervision (PWSS) Program. Nebraska has adopted regulations for (1) filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and

heterotrophic bacteria published by the EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and *E. coli*) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli*) published by EPA on June 29, 1989 (54 FR 27544)).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulation. This determination was based upon a thorough evaluation of Nebraska's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch; U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the *Federal Register* and in newspapers of general circulation in the State of Nebraska. A notice will

also be sent to the person(s) requesting the hearing as well as to the State of Nebraska. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Nebraska Department of Health, 301 Centennial Mall South, 3rd Floor, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Glen Yager, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7296.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: September 16, 1992.

Morris Kay,

Regional Administrator, EPA, Region VII.

[FR Doc. 92-26766 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30338A; FRL-4163-3]

Frost Technology Corp.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Frost Technology Corp., to conditionally register four FROSTBAN™ products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection

Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the *Federal Register* of July 8, 1992 (57 FR 30219), which announced that Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA 94608-1239, had submitted applications to conditionally register the pesticide products FROSTBAN™ A, FROSTBAN™ B, FROSTBAN™ C, and FROSTBAN™ D (File Symbols 64004-R, 64004-E, 64004-G, and 64004-U) respectively; containing the same active ingredients listed below, active ingredients not included in any previously registered products.

These applications were approved on September 16, 1992, for the prevention of frost forming bacteria on plant leaves, blossoms, and fruit for the following products:

1. Product: FROSTBAN™ A. Active ingredients: *Pseudomonas fluorescens* A506 23%, *Pseudomonas syringae* 742RS 24%, and *Pseudomonas fluorescens* 1629RS 24%. (EPA Reg. No. 64004-1).

2. Product: FROSTBAN™ B. Active ingredient: *Pseudomonas fluorescens* A506 71%. (EPA Reg. No. 64004-2).

3. Product: FROSTBAN™ C. Active ingredient: *Pseudomonas syringae* 742RS 71%. (EPA Reg. No. 64004-3).

4. Product: FROSTBAN™ D. Active ingredient: *Pseudomonas fluorescens* 1629RS 71%. (EPA Reg. No. 64004-4).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Pseudomonas fluorescens* A506, *Pseudomonas syringae* 742RS, and *Pseudomonas fluorescens* 1629RS, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Pseudomonas fluorescens* A506, *Pseudomonas syringae* 742RS, and *Pseudomonas fluorescens* 1629RS during the period of conditional registration

will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in a Chemical Fact Sheet on *Pseudomonas fluorescens* A506, *Pseudomonas syringae* 742RS, and *Pseudomonas fluorescens* 1629RS.

A copy of the fact sheets, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: October 19, 1992.

Douglas D. Campit,
Director, Office of Pesticide Programs.

[FR Doc. 92-27288 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-51808; FRL-4175-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of 22 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-42, 93-43, January 6, 1993.

P 93-44, 93-45, 93-46, 93-47, January 10, 1993.

P 93-48, 93-49, 93-50, 93-51, 93-52, 93-53, 93-54, 93-55, 93-56, 93-57, 93-58, January 11, 1993.

P 93-59, January 12, 1993.

P 93-60, 93-62, January 13, 1993.

P 93-63, January 16, 1993.

P 93-64, January 17, 1993.

Written comments by:

P 93-42, 93-43, December 7, 1992.

P 93-44, 93-45, 93-46, 93-47, December 11, 1992.

P 93-48, 93-49, 93-50, 93-51, 93-52, 93-53, 93-54, 93-55, 93-56, 93-57, 93-58, December 12, 1992.

P 93-59, December 13, 1992.

P 93-60, 93-62, December 14, 1992.

P 93-63, December 17, 1992.

P 93-64, December 18, 1992.

ADDRESSES: Written comments, identified by the document control number "OPPT-51808" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-42

Importer. Confidential.

Chemical. (S) Fatty acids, canola-oil.

Use/Import. (S) Raw material used in chemical production. Import range: Confidential.

P 93-43

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Vinyl ester resin.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 93-44

Manufacturer. Confidential.

Chemical. (G) Vinyl modified nonionic surfactant.

Use/Production. (G) Surfactant monomer for thickeners. Prod. range: Confidential.

P 93-45

Importer. Confidential.

Chemical. (G) Polyolefin polyisocyanate prepolymer.

Use/Import. (G) Automobile additive. Import range: Confidential.

P 93-46

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyurethane.

Use/Production. (G) Components of coating, inks, adhesives. Prod. range: Confidential.

P 93-47

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyurethane.

Use/Production. (G) Component of coatings, inks, adhesives. Prod. range: Confidential.

P 93-48

Importer. Mitsubishi Yuka America, Inc.

Chemical. (S) 1H-Pyrrole-2,5-dione, 1,1 172- methylethylidene)bis(4,1-phenyleneoxy-4,1-phenylene)) bis-.

Use/Import. (S) Heat resistant resin. Import range: 5,000-30,000 kg/yr.

Toxicity Data. Static acute toxicity: time LC50 48H > 88.9 mg/l species (*oryzias latipes*). Mutagenicity: negative.

P 93-49

Importer. Meyer Chemicals Inc.

Chemical. (G) Iron metal soap.

Use/Import. (G) Plastics additive. Import range: Confidential.

P 93-50

Manufacturer. Confidential.

Chemical. (G) Polyol acetal.

Use/Production. (G) Polymer additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 93-51

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted malonitrile.

Use/Production. (S) Intermediate in the manufacture of a pesticide. Prod. range: Confidential.

P 93-52

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted halopyrimidine.

Use/Production. (S) Pesticide manufacture intermediate. Prod. range: Confidential.

P 93-53

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted amino pyrimidine.

Use/Production. (S) Technical pesticide product to be recrystallized and exported. Prod. range: Confidential.

P 93-54

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester polyurethane.

Use/Production. (S) Adhesive for upholstery. Prod. range: Confidential.

P 93-55

Importer. Basf Corporation.

Chemical. (G) Polyether polycarbonate diol.

Use/Import. (S) Polyurethane production. Import range: Confidential.

P 93-56

Importer. Basf Corporation.

Chemical. (G) Alkylamine-maleic anhydride condensation product.

Use/Import. (S) Corrosion inhibitor. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: time LC50 96H > 2.2-4.6 mg/l species (golden orfe). Eye irritation: moderate species (rabbit).

P 93-57

Manufacturer. MTM Hardwicks, Inc.

Chemical. (G) Alkylbisbenzenesulfonamide.

Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 93-58

Importer. Mitsubishi Yuka America, Inc.

Chemical. (G) Alkyl methacrylates, cycloalkyl methacrylate, aminoalkyl methacrylate copolymer alkylammonium salt.

Use/Import. (S) Coating agent of polyolefin films. Import range: 300-1,500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Mutagenicity: negative.

P 93-59

Importer. Confidential.

Chemical. (G) 3-(Amine substituted-4-(hydroxyalkoxy)phenyl)azo benzenesulfonate, salt.

Use/Import. (S) Acid dye for nylon carpet films. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Static acute toxicity: time LC50 96H > 1,000 mg/l species (zebra fish). Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: positive species (guinea pig).

P 93-60

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Anthraquinone derivative.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-62

Manufacturer. Monsanto Company.

Chemical. (G) Poly acrylonitrile-co-substituted ethene-co-substituted benzene sulfonic acid, sodium salt.

Use/Production. (S) Adhesive/coating. Prod. range: Confidential.

P 93-63

Manufacturer. H.B. Fuller Company.

Chemical. (G) Polyurethane.

Use/Production. (S) Adhesive/coating. Prod. range: Confidential.

P 93-64

Manufacturer. Dow Corning Corporation.

Chemical. (G) Polymeric phosphinetrile salt.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

Dated: November 4, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-27407 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-59953; FRL-4175-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93-4, 93-5, 93-6, November 5, 1992.

Y 93-7, 93-8, November 12, 1992.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 9 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93-4

Manufacturer. Confidential.

Chemical. (G) Fatty acid isophthalete alkyd polymer.

Use/Production. (S) Alkyd intermediate. Prod. range: Confidential.

Y 93-5

Manufacturer. Confidential.

Chemical. (G) Acrylated, styrenated alkyl polymer.

Use/Production. (S) Binder for general metal coating. Prod. range: Confidential.

Y 93-6

Manufacturer. Mace Adhesives & Coatings Co., Inc.

Chemical. (G) Hexanedioic acid, polymer with 1,3-diisocyanatomethylbenzene, 1,3-isobenzofurandione and polyhydroxyalkanes.

Use/Production. (S) Textile coating binder. Prod. range: Confidential.

Y 93-7

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

Y 93-8

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

Dated: November 4, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-27408 Filed 11-10-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 edition of the *Federal Register*. The following is a list of financial institutions which have been placed in liquidation since the August 24, 1992 publication.

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION

[Alpha listing (name)]

Institution name, city/state	Date closed, region	Ref #
Anchorage C.O.—CPIL, Anchorage, AK.	10/14/92..... San Francisco	3963
Eastwest Bank, National Association, Kihei, HI.	10/2/92..... San Francisco	4519
First Constitution Bank, New Haven, CT.	10/2/92..... New York	4521
First Exchange Bank of Little Rock, Little Rock, AR.	9/24/92..... Chicago	4516
Highlands Community Bank, NA., Clinton Township, NJ.	9/25/92..... New York	4517
Hometown Bank, Edison, NJ.	9/25/92..... New York	4518
Plymouth Five Cents Savings Bank, Plymouth, MA.	9/18/92..... New York	4515
The Howard Savings Bank, Livingston, NJ.	10/2/92..... New York	4520
The Washington Bank, Fairfax, VA.	9/18/92..... Chicago	4514
Universal Bank, Lanham, MD.	10/16/92..... Chicago	4522
1st Ntl Bank of Yorktown, Yorktown, TX.	9/10/92..... Dallas	4513

Dated: November 5, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-27295 Filed 11-10-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; United States Atlantic and Gulf/Southeastern Caribbean Conference; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-061.

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference.

Parties: Puerto Rico Maritime Shipping Authority, Sea-Land Service, Inc., Crowley American Transport, Inc., Kirk Line Ltd., Seaboard Marine, Ltd., Tecmarine Line, Inc., Blue Caribe Line, Compagnie Generale Maritime.

Synopsis: The proposed amendment revises the rule governing the payment of the Agreement's admission fee.

Agreement No.: 224-000861-007, 224-003930-008.

Title: New York-New Jersey/Universal Maritime Service Corp. Terminal Agreement.

Parties: Port Authority of New York & New Jersey, Universal Maritime Service Corp.

Synopsis: The amendments modify the rental rates and the terms of two lease agreements between the parties.

Agreement No.: 224-200156-002.

Title: State of Hawaii/Matson Terminals, Inc. Lease Agreement.

Parties: The State of Hawaii, Matson Terminals, Inc.

Synopsis: The Agreement increases the premises under the Lease by adding non-exclusive Easements 2A, 2B and 2C for the installation and maintenance of reefer powerlines, receptacles, pull boxes and substation. The Agreement also increases the annual rental.

Agreement No.: 224-200702

Title: Port of Palm Beach/Palm Beach Maritime Museum Terminal Agreement.

Parties: Port of Palm Beach ("Port"), Palm Beach Maritime Museum ("Museum").

Synopsis: The Agreement permits the Port to lease to the Museum approximately 1.8 acres of land, and the existing buildings thereon, on Peanut Island for an initial term of ten years.

By Order of the Federal Maritime Commission.

Dated: November 5, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-27330 Filed 11-10-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0779]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a Private Sector Adjustment Factor (PSAF) for 1993 of \$91.4 million, as well as 1993 fee schedules for Federal Reserve priced services. These actions were taken in accordance with the

requirements of the Monetary Control Act of 1980, which requires that fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the Private Sector Adjustment Factor. The Board also has approved modifications to the check collection service by permitting depository institutions to deposit return items with forward collection items and revising the System's minimum service standards to accelerate interdistrict check collection as well as to provide a more uniform national check collection service. The Board also has authorized Reserve Banks to make certain minor price and service level changes for the check collection service within specified parameters without prior Board review.

DATES: The PSAF, the fee schedules, the modifications to the check collection service, and the price and service level change categories subject to the modified approval procedures become effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT:

For questions regarding the Private Sector Adjustment Factor: Gregory L. Evans, Senior Accounting Analyst (202/452-3945), or Gwendolyn Mitchell, Senior Accounting Analyst (202/452-3841), Division of Reserve Bank Operations and Payment Systems; for questions regarding fee schedules: Nalini Rogers, Senior Financial Services Analyst, Check Payments (202/452-3801), Darrell Mak, Financial Services Analyst, Automated Clearing House (202/452-3223), David Elkes, Financial Services Analyst, Fedwire (202/452-3341), Michael Bermudez, Senior Financial Services Analyst, Definitive Securities & Fiscal Agency (202/452-2216), or James Epps, Senior Financial Services Analyst, Cash (202/452-2222), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

Copies of the 1993 fee schedules for check collection, automated clearing house, funds transfer and net settlement, book-entry securities, definitive safekeeping, noncash collection, special cash services, and electronic connections to the Federal Reserve, are available from the Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor (PSAF)

The Board approved a 1993 Private Sector Adjustment Factor (PSAF) for Federal Reserve Bank priced services of \$91.4 million. This amount represents an increase of \$11.5 million or 14.4 percent

over the PSAF of \$79.9 million targeted for 1992.

As required by the Monetary Control Act, the Federal Reserve's fee schedule for priced services includes taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm. These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs).

The methodology, which is unchanged from last year, first entails determining the value of Federal Reserve assets that will be used in producing priced services during the coming year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rates of return on equity derived from the bank holding company model. The rates drawn from the BHC model are based on consolidated financial data for the 50 largest BHCs in each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

The PSAF comprises capital costs, imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed FDIC insurance assessment on clearing balances held with the Federal Reserve to settle transactions.

Discussion

Asset Base

The estimated value of Federal Reserve assets to be used in providing priced services in 1993 is reflected in table 1. Table 2 shows that the assets assumed to be financial through debt and equity are projected to total \$657.1 million. As shown in table 3, this represents a net increase of \$93.5 million or 16.6 percent from 1992. This increase results primarily from assets acquired by the Federal Reserve for the automation consolidation initiative.

Cost of Capital Taxes and Other Imputed Costs

Table 3 shows the financing and tax rates as well as the other required PSAF recoveries proposed for 1993 and compares the 1993 rates with the rates used for developing the PSAF for 1992. The pre-tax return on equity rate decreased from 10.7 percent in 1992 to 8.6 percent for 1993. The decline is a result of a weaker 1991 BHC financial

performance included in the 1993 BHC model, relative to the 1986 BHC financial performance, in the 1992 BHC model.

The increase in the FDIC insurance assessment from \$11.4 million in 1992 to \$21.3 million in 1993, as shown in table 3, is attributable to a higher premium rate and higher clearing balances held by depository institutions with Reserve Banks. Unlike past years, the FDIC will begin charging institutions at differing rates. The risk-based premium plan, scheduled for implementation on January 1, 1993, bases FDIC insurance premiums on bank capital ratios and management strength as measured by primary regulators. Banks can be assessed at premiums ranging from \$0.23 to \$0.31 per \$100 in deposits. For purposes of imputing an FDIC assessment for the PSAF, the assessment rate for an adequately-capitalized, strong bank of \$0.26 for every \$100 in deposits is applied to Reserve Bank clearing balances.

Capital Adequacy

As shown on table 4, the amount of capital imputed for the proposed 1993 PSAF totals 29.2 percent of risk-weighted assets, well in excess of the 8 percent capital guidelines for state member banks and BHCs.

1993 Fee Schedules

Several significant changes are affecting the Reserve Banks' priced services performance for 1993. First, the Reserve Banks will continue their efforts to consolidate automation operations, resulting in significant expenditures to acquire equipment and to begin the transfer of operating systems to three automation consolidation sites. Pending final Board approval later this year, the Reserve Banks also plan to begin implementing Fednet, which will create a unified data communications network that will replace the current interdistrict data communications network, FRCS-80, and the 12 local networks that link depository institutions to the Reserve Banks. This project will also require the acquisition of new equipment and expenditures associated with implementation expenses.

These two major modifications to the Reserve Banks' automation environment will meaningfully enhance the quality and the reliability of Reserve Bank services in the future. At the same time, significant, one-time expenses will be incurred from 1992 through 1994. In establishing 1993 fees for priced services, the Reserve Banks plan to finance a portion of the automation consolidation expenses associated with

the Federal Reserve Automation Service (FRAS) special project and plan to recover the costs by the end of 1999.¹

All other costs associated with automation consolidation and all Fednet costs are expected to be recovered in the year that they are incurred. In setting prices for services, private-sector firms might cover such expenses through retained earnings or finance a greater portion of one-time expenses.

Second, the conversion to an all electronic ACH has been more successful than originally anticipated by the Reserve Banks and has resulted in a more rapid loss of revenue from non-automated transaction fees than expected. An all electronic ACH positions the ACH as a truly electronic payment service and should enable it to be used for a variety of new purposes that require more timely delivery than can be provided when transaction data are delivered using physical delivery methods. Moreover, in the long run, an all electronic ACH will reduce operating costs. Staffing levels, however, can only be reduced over time.

Third, on October 28, 1992, the Board approved the Reserve Banks' withdrawal from the definitive safekeeping service by the end of 1993 (See Docket R-0768 in the Federal Register of Friday, November 4, 1992). Unrecoverable expenses associated with shipping securities to other depositories will be incurred as a result of the withdrawal.

Because significant one-time costs will be incurred during the next several years, the Board believes that it is important to maintain price stability, to the extent possible, during this transition. The Monetary Control Act (MCA) mandates that, over the long run, fees should be established to recover all direct and indirect costs incurred in providing Federal Reserve priced services, including the PSAF, giving due regard to competitive factors and a adequate level of such services nationwide. The Board's pricing principles require the Federal Reserve to recover total costs, plus the PSAF, over

the long run for each major priced service category.

Following the Federal Reserve's initial efforts to assess fees for its services in the early 1980s, the Reserve Banks' cost recovery performance, across all services and for individual services, comes very close to achieving full cost recovery. In fact, from 1986 through 1992 estimate, the Reserve Banks have accrued a net revenue surplus equal to \$43.7 million.

For 1993, the Reserve Banks project a recovery rate of 99.1 percent across all services. Given the difficulty in projecting costs and revenues, the Board believes that this projected recovery rate reasonably satisfies the intent of the MCA. Three individual priced services—automated clearing house (ACH), noncash collection, and definitive safekeeping—are expected to recover less than 100 percent of total costs, plus the PSAF.

A recovery rate of 92.3 percent is projected for the ACH service, and all automation consolidation special project costs are being financed. Projections indicate that the ACH service will be able to recover 100 percent of its total costs, plus the PSAF, by 1995 and that all FRAS special project costs that will be financed can be fully recovered by 1999 throughout increasing ACH transaction fees.

For the noncash collection service, a recovery rate of 97.3 percent is projected. Volumes are continuing to decline due to the decline of outstanding bearer securities and the loss of customers. The Reserve Banks are consolidating noncash collection operations during 1993 and taking number of other steps to reduce costs. Once operations are consolidated, the Reserve Banks' goal is to achieve full cost recovery.

In the case of the definitive safekeeping service, a projected 50.2 percent recovery rate is expected, based on the Board's decision to withdraw from the service.

Historically, the Reserve Banks have attempted to recover all costs incurred

in providing individual priced services in the year that the costs were incurred. Financing a portion of the FRAS special project expenses in a modest departure from earlier approaches to cost recovery and is a step toward adopting practices that are similar to those that would be used in private-sector firms. To address the issues that have arisen during the development of 1993 priced service fees, the Board believes that the methodology that has been used by the Federal Reserve for treating variations in recovery rates for priced services should be reviewed.

Discussion

The 1992 fees approved by the Board were expected to recover 100.6 percent of the costs of providing priced services in 1992, including the PSAF and the cost of float. Through the first nine months of 1992, the System recovered 101.6 percent of priced services costs, before costs associated with the automation consolidation special project. The Reserve Banks now estimate that 100.9 percent of total priced services costs, including PSAF, will be recovered in 1992. After including special project costs of \$8.0 million, the 1992 recovery rate is expected to be 99.8 percent. Approximately \$2.8 million of automation consolidation costs will be financed and recovered later.

Total priced services costs before special project costs are expected to be 2.6 percent below original projections and total revenue is estimated to be about 2.3 percent lower than original projections.

In 1993, total priced services costs, including the PSAF, are projected to increase 1.6 percent before special project costs.² The modest increase in costs reflects continued efforts to control costs by the Reserve Banks. Including the \$18.2 million of special project costs that are projected to be recovered in 1993, total priced services costs will increase 2.9 percent. Appropriately, \$11.6 million of accumulated automation consolidation special project costs will be financed.

¹ In 1981, the Board adopted a policy that permits the Reserve Banks to defer and finance development costs if the development costs would have a material effect on unit costs, provided a conservation time period is set for full cost recovery and financing factor is applied to the deferred portion of development costs.

² Effective January 1, 1993, the Reserve Banks will be adopting Financial Accounting Standards Board (FASB) Statement 106, Employers' Accounting for Postretirement Benefits Other Than Pensions. Because the FASB indicated one objective in developing Statement 106 was parallel accounting treatment for pensions and other postretirement employee benefits, the Federal Reserve determined to apply parallel treatment for Reserve Bank pricing

purposes. Accordingly, credits arising from accounting for pensions (excluding those resulting from the amortization of the initial transition asset) are considered by each district and service when developing pricing recommendations. These credits largely offset the additional expense impact resulting from implementation of FASB Statement 106. Previously, the pension credits were recorded in the aggregate for priced services and were not considered in establishing fees.

COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1986.....	\$627.7	\$599.3	104.7	\$0	\$599.3	104.7	\$0
1987.....	649.7	627.3	103.6	0	627.3	103.6	0
1988.....	667.7	674.7	99.0	2.5	677.2	98.6	0
1989.....	718.7	726.6	98.9	3.7	730.3	98.4	0
1990.....	746.5	733.4	101.8	2.0	735.4	101.5	0
1991.....	750.1	745.1	100.7	1.1	746.2	100.5	0
1992 (est).....	767.6	761.1	100.9	8.0	769.1	99.8	2.8
1993 (bud).....	784.2	773.3	101.4	18.2	791.5	99.1	11.6

Total revenue is projected to increase 2.2 percent compared with the 1992 level, reflecting only minor price changes. Based on cost and volume

projections, a 99.1 percent recovery rate is anticipated. The above table highlights the cost recovery performance for priced services since 1986.

Check Collection

Estimated 1992 and projected 1993 cost recovery performance for the check collection service is shown in the table below.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est).....	\$583.5	\$579.5	100.7	\$4.7	\$584.2	99.9	\$0
1993 (bud).....	603.0	593.4	101.6	9.5	602.9	100.0	0

1992 Performance

The Reserve Banks' projections for 1992, are comparable to the original 1992 cost recovery projections. The check collection service recovered 100.9 percent of total costs, including PSAF, through September 1992. Thus, a recovery of 100 percent of total costs, including the PSAF and special project costs, may be realized in 1992.

1993 Projections

The Reserve Banks project that the check collection service will recover its total costs, including allocated costs for the automation consolidation special project and the costs of the check image special project³ in 1993.

As a result of the Reserve Banks' ongoing cost containment efforts, operating expenses, before special projects, will increase a modest 2.4 percent, compared with 1992 costs.

³ The check image special project involves research and development of the application of image technology to the check collection service in order to improve the efficiency of the payments mechanism.

Volume Projections

Reserve Banks project an increase in forward check collection volume—1.2 percent in processed volume and 1.4 percent in fine-sort volume—and a slight decrease of 0.9 percent in return-item volume for 1993. Attractive group sort products and improved weekend deadlines for mixed and other Fed products are the primary reasons for the projected increase in processed check volume. The Board's approval of amendments to Regulation CC, which require payor banks to pay collecting banks in same-day funds for check presentment, beginning January 3, 1994, may result in some bilateral agreements being negotiated during 1993. If such arrangements become widespread, the projected fine-sort volume increase might not be realized.

1993 Fees

The following table highlights selected 1993 price ranges and changes compared

with 1992 check collection fees.

Overall, prices for both forward and return-items, including cash letter/package fees, will increase 2.6 percent on a weighted average basis. Systemwide, the majority—1,065—of forward collection and fine-sort fees will be retained, 428 will be increased, and 53 will be reduced. There will be an average increase of 1.4 percent in forward collection fees and 3.3 percent in fine-sort per-item fees. Return-item prices will increase an average of 8.0 percent, with 615 fees increased, 582 unchanged, and 10 reduced. The increased return-item prices more closely align fees with the cost of processing return-items. The Board also has approved an increase in off-line, large-dollar, return-item notification fees. The increase is designed to reflect more accurately the costs of providing these labor-intensive services and to encourage the use of electronic notifications.

PRICE RANGES

Products	1993 price ranges	Range of changes 1992-to-1993
	(per item)	(per item)
Items:		
Forward processed:		
City	\$0.012 to 0.031	\$-0.002 to +0.002.
RCPC	0.016 to 0.039	-0.001 to +0.004.
Fine sort:		
City	0.004 to 0.008	-0.003 to +0.002.
RCPC	0.003 to 0.012	-0.001 to +0.001.
Qualified return items:		
City	0.110 to 0.500	+0.010 to 0.100.
RCPC	0.120 to 0.500	+0.010 to 0.100.
Raw return items:		
City	0.800 to 1.680	+0.095 to 0.400.
RCPC	0.800 to 1.680	+0.095 to 0.400.
Cash Letters:	(per cash letter)	(per cash letter)
Forward processed	\$0.50 to 4.50	\$+0.25 to 1.00.
Forward fine-sort package	1.50 to 4.50	+0.25 to 1.00.
Return items: raw and qualified	0.50 to 4.50	+0.25 to 1.00.

Reserve Banks, for the most part, will not change payor bank services and truncation fees for 1993. Several districts made minor adjustments in selected product offerings, primarily decreases in MICR capture or truncation fees. Lower fees should promote electronic check services, particularly for smaller institutions.

Modest adjustments to the fees charged for the use of the Interdistrict Transportation System (ITS) were approved. The adjustments result in a weighted average increase of 1.1 percent for weekday service and constant weekend prices. (Weekend fees were decreased 7.7 percent in 1992.) Of the 2,256 weekday ITS fees, 2,035 were unchanged, 219 increased, and 2 were reduced. Weekday volume is projected to increase 2.5 percent, and weekend volume is projected to increase 5 percent.

Service Level Changes

The Board has approved two modifications to check service levels—a voluntary intermingled return check service and new minimum check service level standards.

Three Federal Reserve Districts have offered an intermingled returned check service on a pilot basis since 1989. Under this program, depository institutions agreeing to receive forward collection and qualified returned checks intermingled in one cash letter from the Federal Reserve may deposit forward collection and qualified returned checks intermingled. Results of the pilot indicate that the program contributes to cost savings and improved quality for both Reserve Banks and participating depository institutions. The Reserve

Banks believe that the benefits of the service are sufficient to offer it on an on-going basis.

The cost of handling an intermingled, qualified returned check is slightly higher than the cost of processing a forward collection check due to higher reject and adjustment rates. Accordingly, the fee structure for the intermingled program includes a surcharge to the forward collection per-item fee for intermingled returned checks. Under the pilot program, the fee charged for intermingled returned checks was the same as the forward collection per-item fee. While only the three districts presently piloting the service plan to offer intermingling in 1993, the Board has approved this service as an on-going service, and has adopted the modified fee structure, effective January 1, 1993.

The 1993 check collection fee and deadline schedules also reflect new minimum check service level standards, which represent a variety of service level improvements. Specifically, the standards require Reserve offices to:

- Establish RCPC premium deadlines no earlier than 3 a.m. local time (Current deadlines range from 1 a.m. to 5 a.m.);
- Offer an RCPC group sort option with a deposit deadline no earlier than 3 a.m. (There are no current RCPC group sort requirements.);
- Offer mixed and other Fed deposit deadlines that are no more than two hours prior to the first ITS dispatch (Presently, there are no guidelines on the relationship between these deadlines and ITS dispatches);
- Offer weekday consolidated deadlines that are no more than 30 minutes before the corresponding ITS

dispatch, unless an airport consolidation service is offered (The existing guideline is one hour.);

- Offer other Fed group sort products that include high-volume, other Fed endpoints with deadlines no more than two hours prior to the first and last ITS dispatch (Presently, other Fed group sorts are not mandatory service offerings.); and

- Cull high-dollar checks drawn on high-dollar group sort endpoints from mixed and other Fed deposits where \$5 million per day can be expedited to another Fed office (This procedure is not currently in place in all Federal Reserve offices.)

The new minimum check service levels are designed to speed interdistrict check collection, to be responsive to depositors' needs for improved deadlines and availability, and to develop a more uniform national check collection service. Exemptions to selected minimum check service level standards may be granted in instances where an office demonstrates that circumstances, such as time zone differences or transportation schedules, adversely affect its ability to comply with a given standard. The Board has approved these standards for implementation January 1, 1993, and delegates to the Director of the Division of Reserve Bank Operations and Payment Systems, the authority to approve selected exemptions.

Automated Clearing House (ACH)

The table below presents the estimated 1992 and projected 1993 cost recovery performance for the commercial ACH service.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est).....	\$60.3	\$64.0	94.1	\$0	\$64.0	94.1	\$2.6
1993 (bud).....	61.6	66.8	92.3	0	66.8	92.3	10.3

1992 Performance

When the 1992 fee schedule for the ACH service was adopted, it was projected that the Reserve Banks would recover 100.1 percent of commercial ACH costs, including the PSAF but excluding special project costs, which are being financed. While the estimated recovery rate is now less than 100 percent, the Reserve Banks will recover all direct, support, and overhead cost, plus about 30 percent of the PSAF. It is also important to note that the Reserve Banks' estimates of current year cost recovery performance have historically been one to two percentage points below actual performance. (Through September 1992, the commercial ACH service has recovered 98.0 percent of costs, plus the PSAF.)

The variation from the original projection is attributable to higher than planned automation-related expenses and a more rapid conversion to an all electronic ACH than had been anticipated, which has reduced revenue received from non-automated fees.⁴ As of September 30, 1992, 82 percent of depository institutions using commercial ACH services had installed electronic connections. It is now anticipated that by the end of 1992, 92 percent of commercial ACH endpoints will have installed electronic connections. The all electronic ACH initiative positions the ACH as a truly electronic payment service and should enable it to be used for a variety of new purposes that require more timely delivery than can be provided when transaction data are delivered using physical delivery methods. Moreover, in the long run, an all electronic ACH will reduce the Reserve Banks' operating costs by eliminating many current manual processes.

Additionally, it is now anticipated that the growth rate for commercial ACH transactions will be 16.8 percent, rather than the original projection of 17.6 percent. The slower growth rate that is

now projected reflects a larger ACH volume base and increased competition from private-sector service providers.

1993 Projections

The Reserve Banks' projection of a 92.3 percent recovery rate for 1993 reflects several significant factors. First, the conversion to an all electronic ACH will continue to affect revenues for the ACH service. For example, it is projected that the volume of tapes billed by the Reserve Banks will decline nearly 86 percent, compared with 1992 volume levels.

Second, the projected 16.3 percent increase for 1993 in commercial ACH transaction volume, reflects a modest decrease in volume growth compared with 1992.

Third, as discussed earlier, the Reserve Banks are implementing a new consolidated automation environment, as well as a new unified data communications network. Both of these efforts will improve the reliability and the quality of the ACH service. The conversion to FRAS and Fednet began in 1992 and should be completed by year end 1994. While some automation consolidation costs are being treated as special project costs that may be financed and recovered later, other costs will be recovered in the year they are incurred.

Finally, the Reserve Banks are developing new ACH application software, FedACH, which is designed to operate in a consolidated mode and to provide enhanced features, such as flow processing, to users of the Reserve Banks' ACH services. The development costs of the FedACH software are being expensed as they are incurred while the Reserve Banks continue to incur expenses to maintain the current ACH application software.

1993 Fees

The major initiatives being undertaken by the Reserve Banks are clearly investments, which will enable the Federal Reserve to provide high quality, reliable ACH services in the future. The costs that will be incurred over the next two to three years, are one-time expenses and the Board believes that

such one-time expenses should be treated differently than on-going expenses. The Board, therefore, believes that the current ACH transaction fees should be retained during 1993. At the same time, to reflect the increased costs of providing non-automated services as volumes decline, the Board believes that fees for labor-intensive, non-automated services should be increased as indicated in the table below.

PRICE CHANGES

Products	1992	1993 (proposed)
Paper Output.....	\$8.00	\$15.00
Tape Output/Output.....	15.00	25.00
Paper Returns and NOCs.....	5.00	10.00
Government Paper NOCs.....	1.00	5.00
Telephone Returns and Ad- vices.....	5.00	10.00
Voice Response Returns and NOCs ¹	1.50	2.00

¹ Currently, voice response services are offered by the Chicago, St. Louis, Kansas City, and Dallas Reserve Banks. By December 31, 1992, all Reserve Banks will offer this service.

Not only do these increased changes reflect the costs of providing manual services, but they should also provide incentives for the continued migration to an all electronic ACH. In addition, to reflect more accurately the cost of processing ACH files, the Board believes that the fee for processing files should be increased from \$1.25 to \$1.50 per file.

The Board considered the following factors in recommending this strategy. First, the projected recovery rate for the commercial ACH service will recover all direct, support, and overhead costs, plus 20 percent of the PSAF allocated to the ACH service.

Second, the ACH service has fully recovered its total commercial costs, plus the PSAF since 1986, when the subsidy for the commercial ACH service was eliminated. Over this period, excess revenues amounted to \$5.4 million. If these excess revenues had been retained, as they might have been by a private-sector firm, they would be available to cover about 60 percent of the projected 1992 and 1993 revenue shortfalls. Moreover, the Reserve Banks

⁴ In June 1991, the Board determined that all depository institutions using the Reserve Banks' commercial ACH services should establish electronic connections to originate and receive transactions by July 1, 1993.

project that all commercial ACH costs, plus the PSAF, will be covered in 1995 and that, by the end of 1999, all FRAS-related special project costs that are being financed will be fully recovered.

Third, the Reserve Banks are undertaking a number of initiatives that may have the potential to reduce ACH costs during 1993 and 1994. Steps are being taken to reduce accounting support costs. In addition, a work group has been formed to identify methods for reducing direct expenses further and for using other support services more efficiently.

Fourth, to achieve a 100 percent recovery rate in 1993, the Reserve Banks

would need to raise transaction fees approximately 20 percent and would have to lower them later. The Board believes that increasing ACH transaction fees would be disruptive and would have a negative effect on the continued growth of the ACH mechanism. Although the total costs of using the ACH are lower than the total costs of using checks, ACH processing fees are generally higher than check collection fees. This is one of the factors that affects the conversion of a variety of payment applications to the ACH. As the volume of ACH payment increases, studies have shown per-item processing costs will decline. Therefore, if the

Federal Reserve were to raise ACH transaction fees for 1993 and 1994, the potential to realize the long-term benefits of this efficient payment mechanism could be diminished. Given the potential for future efficiencies associated with the conversion of paper-based payments to electronics, the Board believes that short-term price increases should be avoided to provide the opportunity for continued increases in the use of electronic payments.

Funds Transfer and Net Settlement

The following table presents the estimated 1992 and projected 1993 cost recovery performance for the funds transfer and net settlement service.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est)	\$86.6	\$79.3	109.1	\$22.7	\$82.0	105.2	\$0
1993 (bud)	90.6	83.1	109.0	7.5	90.6	100.0	0.5

1992 Performance

Original projections indicated that the funds transfer and net settlement service would recover 99.5 percent of total costs, plus the PSAF and allocated costs related to the FRAS special project. Due to lower than expected overhead allocations relating to data processing, estimates now indicate that the recovery rate will be 105.5 percent. Through September 1992, 110.0 percent of total costs, plus the PSAF and special project costs, have been recovered.

1993 Projections

Total costs, including the PSAF, are projected to increase about 4.7 percent in 1993, due principally to costs associated with Fednet's initial implementation. Funds transfer volume is expected to increase 4.7 percent in 1993, compared with a 5.1 percent increase in 1992. The anticipated growth rate is consistent with recent funds

transfer volume trends. Shifts in volume to alternate payments mechanisms may begin in 1993, due to the Board's plan to assess fees for daylight overdrafts in 1994. As a result, the projected volume growth rate may not be achieved.

1993 Fees

Because the Reserve Banks will be able to recover total costs, plus the PSAF and the majority of FRAS special project costs without increasing on-line transfer fees, the Board believes that the current fees should be retained. The Board, however, believes that the fees associated with handling funds transfers for off-line institutions should be increased as indicated in the above table. Although the increased charges would not make a significant contribution to the 1993 revenues, they more accurately reflect the expense of continuing to provide labor-intensive off-line services.

PRICE CHANGES

Products	1992	1993 (proposed)
Funds Transfer:		
Off-line origination surcharge	\$7.00	\$10.00
Telephone advice surcharge	7.00	10.00
Net Settlement:		
Off-line settlement statement surcharge	8.00	10.00
Telephone advice surcharge	7.00	10.00

Book-Entry Securities

The following table presents the 1993 cost recovery performance for the book-entry securities service.⁵

⁵ These financial data relate only to book-entry transfers of government agency securities, which are priced by the Federal Reserve. The U.S. Treasury establishes fees for book-entry transfers of Treasury securities.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est)	\$13.1	\$12.5	105.0	\$0.6	\$13.0	100.5	\$0
1993 (bud)	14.2	13.0	109.6	1.2	14.2	100.0	0.6

1992 Performance

The Reserve Banks originally projected that the book-entry service would recover 99.9 percent of total costs, plus the PSAF and FRAS special project costs. Government agency securities transfer volume has been higher than anticipated, due to the decline in mortgage interest rates, and has contributed to a somewhat improved cost recovery estimate. Through September 1992, the book-entry service has recovered 104.1 percent of total costs, plus the PSAF and special project costs.

1993 Projections

An increase of 4.1 percent in total costs is projected for 1993, reflecting increases associated with automation consolidation and the new book-entry application development project. Book-entry securities transfer on-line origination volume is estimated to increase by 9.7 percent in 1993, which is slightly lower than the estimated 13.0 percent growth rate for 1992.

1993 Fees

Because the Reserve Banks will be able to recover total costs, plus the PSAF and the majority of FRAS special project costs without raising fees, the Board believes that the current fees for the book-entry service should be retained. To ensure that only customers whose activities generate costs associated with the maintenance of collateral will be charged, the Board believes that all transfer and account/issue maintenance fees associated with collateral accounts used to secure book-entry securities daylight overdrafts should be explicitly priced.

Electronic Connections

The Federal Reserve charges fees for electronic connections to the Reserve Banks for priced services. The cost and revenue associated with electronic access are allocated to the various services based on usage.

As noted earlier, the Reserve Banks will begin implementing a new telecommunications network, Fednet, in 1993. Fednet will provide the current customer connection options as well as standardized higher-speed connections types. In addition, the new network will incorporate more robust uniform contingency back-up capabilities.

During the transition to Fednet, the Board believes that the current connection fees for standard connection types (i.e., connections with line speeds of 9600 bits per second or less), electronic access start-up fees, and gateway fees should be retained.

The implementation of Fednet will, however, result in some service level changes that will affect electronic access fees in a number of relatively minor ways. First, depository institutions currently either purchase modems or lease them from the Reserve Banks. Thus, the cost of this equipment is recovered separately from connection fees. As depository institutions with leased-line and high-speed dial connections are converted to the Fednet environment, they will be provided with primary and backup modems or digital service units (DSUs) owned by the Reserve Banks. In addition, in the Fednet environment, depository institutions with leased-line connections will be required to have a dial back-up capability.

The Board has approved that the cost for all required Fednet communication components, including modems/DSUs and back-up circuits, be recovered through the primary connection fee. Reserve Bank lease fees for modems would continue until, on a customer-by-customer basis, that equipment is replaced by the new Fednet equipment. In addition, as customers are converted to the new hardware that supports the new minimum back-up requirements, any fee associated with old back-up connections would be eliminated.

Second, Fednet will offer institutions back-up options that may provide an

even higher level of service during contingency situations. The Board has approved that these optional back-up services be priced on a discrete basis. Specifically, a depository institution would be charged \$25 per month for an optional back-up modem/DSU. Institutions that request an optional back-up redundant circuit would be assessed the associated standard fee for that type of connection.

Finally, high-speed electronic connections (those with line speeds greater than 9.6 kbps) are not currently considered standard connection types and are priced on a discrete basis by each Reserve Bank. Some of these circuits are leased by the Reserve Banks and institutions are charged the actual circuit costs plus a share of intradistrict data communications overhead costs. In other cases, the institution itself leases the circuit. Beginning in 1993, all leased circuits, including the high-speed circuits, will be leased by the Reserve Banks. The Reserve Banks will charge the institution using the high-speed circuit the greater of the standard dedicated lease-line monthly fee of \$700, or the actual circuit, modem/DSU, and overhead costs. For institutions that are not currently charged for high-speed circuits based on actual costs, the 1993 monthly connection fee would not exceed \$1,400.

Definitive Safekeeping

The following table presents the estimated 1992 and projected 1993 cost recovery performance for the definitive safekeeping service. The 1993 projections assumed Board approval of the Federal Reserve's withdrawal from this service during 1993.

The 1992 recovery rate for the definitive safekeeping service is estimated to be lower than originally projected, due to greater than anticipated volume declines. Through September 1992, the definitive safekeeping service has recovered 80.6 percent of total costs, including PSAF.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est)	\$3.3	\$4.1	80.2	\$0	\$4.1	80.2	\$0
1993 (bud)	2.1	4.2	50.2	0	4.2	50.2	0

Based on withdrawal from the definitive safekeeping service by year-end 1993, accelerated revenue run off

due to withdrawal, the absorption of associated shipping costs, and no fee changes, the 1993 cost recovery for the

combined definitive safekeeping and purchases and sales service is projected to be 50.2 percent. The recovery rate for

the purchases and sales service, with a fee increase at one Reserve Bank, is projected to be 93.9 percent and should improve if Reserve Banks are permitted to consolidate this service in 1993.

Noncash Collection

The following table presents the estimated 1992 and projected 1993 cost recovery performance for the noncash collection service.

The recovery rate for the noncash collection service is projected to fall

below original estimates for 1992, due to greater than expected volume declines, despite aggressive cost containment efforts. The Noncash collection service has recovered 89.6 percent of total costs, including PSAF, through September 1992.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est.)	\$7.8	\$8.9	87.4	\$0	\$8.9	87.4	\$0.2
1993 (bud.)	5.9	6.1	97.3	0	6.1	97.3	0.2

The projected 97.3 percent recovery rate for 1993 reflects continued volume declines due to the decline of outstanding bearer securities, the loss of major customers to other service providers, and Federal Reserve consolidation initiatives. To control costs in this environment, the Reserve Banks plan to continue consolidating processing sites. During 1993, the remaining eight sites will be reduced to four.

The four Reserve Banks that will continue as noncash processors after 1993 are expected to recover

approximately 100 percent of total costs, plus the PSAF. Three of these Banks will increase a total of six fees in 1993. Another Reserve Bank, expecting to consolidate by the end of 1993, will increase seven fees.

Cash Services

Cash services that are priced by the Federal Reserve Banks include cash transportation, coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

Data on priced cash services are being included to provide a complete view of

Reserved Bank priced service performance. Cash transportation fee changes do not require Board approval. The staff, however, is notified when changes occur. The fees for the other priced cash services have been approved by the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority.

The following table presents the estimated 1992 and projected 1993 cost recovery performance for the priced cash services.

PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Cost + PSAF	Percent recovery	Special project costs	Total cost + PSAF	Percent recovery after special project costs	Special project costs financed (cumulative)
1992 (est.)	\$13.0	\$12.9	102.0	\$0	\$12.8	102.0	\$0
1993 (bud.)	6.9	6.7	102.0	0	6.7	102.0	0

Although the estimated 1992 cost recovery rate for priced cash services is unchanged from the original projection of 102 percent, original cost and revenue projections of \$15.1 and \$15.4 million, respectively, declined to \$12.8 and \$13.0 million because the Cleveland office and the San Francisco District discontinued cash transportation services during 1992. Through September 1992, cash services has recovered 102.2 percent of total costs, including PSAF.

The 48 percent decline in projected 1993 costs and revenues compared with 1992 estimate, is the result of the full-year effect of the transportation services discontinued in 1992 and the withdrawal from transportation services by the Philadelphia office in 1993. Only the

Pittsburgh, Cincinnati, Minneapolis, and Helena offices plan to continue the service in 1993.

Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." In this analysis, staff assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or

constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board believes that the price and service level changes would not have a substantial effect on payments system participants and would not have a direct and material effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The Board recognizes that the divergence of the recommended recovery rate for the ACH service from 100 percent may appear to have competitive implications. The Board believes, however, that the approach that is being recommended for setting ACH transaction fees is consistent with the approach that would

be used by a private-sector firm, which would likely cover one-time transition costs through the use of retained earnings or finance the costs and repay them later. Therefore, the Board does not believe that maintaining the current ACH transaction fees would have an adverse impact on competitors.

By order of the Board of Governors of the Federal Reserve System, November 3, 1992.

William W. Wiles,

Secretary of the Board.

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[In millions of dollars—average for year]

	1993	1992
Short-term assets:		
Imputed reserve requirement on clearing balances.....	534.8	372.0
Investment in marketable securities.....	5,465.2	2,728.0
Receivables ¹	32.6	32.7
Materials and supplies ¹	5.4	5.6
Prepaid expenses ¹	9.3	11.2

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[In millions of dollars—average for year]

	1993	1992
Items in process of collection.....	3,826.4	2,868.1
Total short-term assets.....	9,873.7	6,017.6
Long-term assets:		
Premises ^{1,2}	359.0	341.0
Furniture and equipment ¹	201.0	139.2
Leasehold improvements and long-term prepayments ¹	49.8	33.9
Capital leases.....	0.0	0.1
Total long-term assets.....	609.8	514.2
Total assets.....	10,483.5	6,531.8
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items.....	6,652.4	3,511.4
Deferred credit items.....	3,174.1	2,456.7
Short-term debt ³	47.3	49.5

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[In millions of dollars—average for year]

	1993	1992
Total short-term liabilities.....	9,873.7	6,017.6
Long-term liabilities:		
Obligations under capital leases.....	0.0	0.1
Long-term debt ³	201.8	170.4
Total long-term liabilities.....	201.8	170.5
Total liabilities.....	10,075.5	6,188.1
Equity ³	408.0	343.7
Total liabilities and equity.....	10,483.5	6,531.8

¹ Financed through PSAF; other assets are self-financing.

² Includes allocations of Board of Governors' assets to priced services of \$0.4 million for 1993 and \$0.3 million for 1992.

³ Imputed figures represent the source of financing for certain priced services assets.

Note: Details may not add to totals due to rounding.

TABLE 2.—DERIVATION OF THE 1993 PSAF

[Dollars in millions]

A. Assets to be Financed ¹		
Short-term.....	\$47.3	
Long-term ²	609.8	\$657.1
B. Weighted Average Cost		
1. Capital Structure ³		
Short-term Debt.....	7.2%	
Long-term Debt.....	30.7%	
Equity.....	62.1%	
2. Financing Rates/Costs ³		
Short-term Debt.....	6.2%	
Long-term Debt.....	9.0%	
Pre-tax Equity ⁴	8.6%	
3. Elements of Capital Costs		
Short-term Debt.....	\$47.3 × 6.2% =	\$2.9
Long-term Debt.....	201.7 × 9.0% =	18.2
Equity.....	408.1 × 8.6% =	35.3
		\$56.4
C. Other Required PSAF Recoveries		
Sales Taxes.....	\$11.4	
Federal Deposit Insurance Assessment.....	21.3	
Board of Governors Expenses.....	2.3	35.0
D. Total PSAF Recoveries		\$91.4
As a percent of capital.....		13.9%
As a percent of expenses ⁵		15.1%

¹ Priced service asset base is based on the direct determination of assets method.

² Consists of total long-term assets, including the priced portion of FRAS assets, less capital leases, which are self financing.

³ All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 33 percent are assumed to be financed by long-term debt and 67 percent by equity.

⁴ The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.

⁵ Systemwide 1993 budgeted priced service expenses less shipping are \$604.8 million.

TABLE 3.—COMPARISON BETWEEN 1993
AND 1992 PSAF COMPONENTS

	1993	1992
A. Assets to be Financed (millions of dollars):		
Short-term.....	\$47.3	\$49.5
Long-term.....	609.8	514.1
Total.....	657.1	563.6
B. Cost of Capital:		
Short-term Debt Rate.....	6.2%	7.9%
Long-term Debt Rate.....	9.0%	9.2%
Pre-tax Return on Equity.....	8.6%	10.7%

TABLE 3.—COMPARISON BETWEEN 1993
AND 1992 PSAF COMPONENTS—Con-
tinued

	1993	1992
Weighted Average Long-term Cost of Capital.....	8.8%	10.2%
C. Tax Rate.....	29.5%	29.4%
D. Capital Structure:		
Short-term Debt.....	7.2%	8.8%
Long-term Debt.....	30.7%	30.2%
Equity.....	62.1%	61.0%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes.....	\$11.4	\$10.2

TABLE 3.—COMPARISON BETWEEN 1993
AND 1992 PSAF COMPONENTS—Con-
tinued

	1993	1992
Federal Deposit Insurance Assessment.....	21.3	11.4
Board of Governors Expenses.....	2.3	1.9
F. Total PSAF:		
Required Recovery ...	\$91.4	\$79.9
As Percent of Capital.....	13.9%	14.2%
As Percent of Expenses.....	15.1%	13.2%

TABLE 4.—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Dollars in millions]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances.....	\$534.8	0.0	\$0.0
Investment in marketable securities.....	5,465.2	0.0	0.0
Receivables.....	32.6	0.2	6.5
Materials and supplies.....	5.4	1.0	5.4
Prepaid expenses.....	9.3	1.0	9.3
Items in process of collection.....	3,826.4	0.2	765.3
Premises.....	359.0	1.0	359.0
Furniture and equipment.....	207.4	1.0	207.4
Leases & long-term prepayments.....	43.4	1.0	43.4
Total.....	10,483.5		1,396.3
Imputed equity for 1993.....	408.0		
Capital to risk-weighted assets.....	29.2%		

[FR Doc. 92-27343 Filed 11-10-92; 8:45 am]

BILLING CODE 6210-01-M

**Citizens Bankshares, Inc., et al.; Notice
of Applications to Engage de novo in
Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1992.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230
South LaSalle Street, Chicago, Illinois
60690:

1. *Citizens Bankshares, Inc.*,
Shawano, Wisconsin; to engage *de novo*
through its subsidiary, Wisconsin

Finance Corporation, Shawano,
Wisconsin, in making consumer finance
loans pursuant to § 225.25(b)(1)(i) of the
Board's Regulation Y.

2. *Marshall & Ilsley Corporation*,
Milwaukee, Wisconsin; to engage *de
novo* through its subsidiary, M & I
Capital Markets Group, Inc., Milwaukee,
Wisconsin, in financial advisory
activities pursuant to § 225.25(b)(4)(vi)
of the Board's Regulation Y.

Board of Governors of the Federal Reserve
System, November 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27346 Filed 11-10-92; 8:45 am]

BILLING CODE 6210-01-F

**Dresdner Bank AG; Acquisition of
Company Engaged in Permissible
Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or

control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Dresdner Bank AG*, Frankfurt, Germany ("Dresdner"); to acquire *OSV Currency Advisors, L.P.*, Boston, Massachusetts ("OSV"), and thereby engage in acting as an investment adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y. In connection with this activity, Dresdner proposes to engage, through OSV, in currency overlay activities. Currency overlay activities are described by Dresdner as consisting primarily of the provision of advice to clients that have invested in international securities markets regarding ways in which to hedge currency risk associated with those investments. Dresdner asserts that these currency overlay securities are incidental to and will be provided solely in conjunction with investment advisory services permissible for bank holding companies under 12 CFR 225.25(b)(4).

Board of Governors of the Federal Reserve System, November 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27347 Filed 11-10-92; 8:45 am]

BILLING CODE 6210-01-F

GAB Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *GAB Bancorp*, Jasper, Indiana; to acquire 100 percent of the voting shares of *Unibancorp*, Loogootee, Indiana, and thereby indirectly acquire *The Union Bank*, Loogootee, Indiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The Country Bancshares, Inc.*, Charlotte, Texas; to become a bank holding company by acquiring 99.4 percent of the voting shares of *The Country Bank*, Charlotte, Texas.

Board of Governors of the Federal Reserve System, November 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-27345 Filed 11-10-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Office of Population Affairs; Announcement of Grant

INTRODUCTION

The Office of Adolescent Pregnancy Programs, Office of Population Affairs (OPA), Office of the Assistant Secretary for Health, has provided a grant to fund a conference entitled "Abstinence: The Best Choice for Youth" to Central State University in Wilberforce, Ohio.

AUTHORITY

Title XX of the Public Health Service Act, 42 U.S.C. 300z, et seq. authorizes the Office of Population Affairs to award grants to support dissemination activities which encourage and support research projects and demonstration projects concerning the societal causes and consequences of adolescent premarital sexual relations, contraceptive use, pregnancy, and child rearing; and to support evaluative research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and adolescent childbearing for the parents, the child, and their families; and, to encourage and provide for the dissemination of results, findings, and information from programs and research projects relating to adolescent premarital sexual relations, pregnancy, and parenthood.

ELIGIBLE APPLICANT

Central State University, an Historically Black College or University, is uniquely suited to accomplish the objectives of this grant because it is situated in a centrally located part of the country. It has the expertise in dealing with current issues facing minority youth and communities. In addition, it has the ability to bring together leaders in psychology, sociology and related fields, with expertise specifically related to this topic and group to deal with adolescent premarital sexual relations, pregnancy, and parenthood, with a focus on black youth.

AVAILABILITY OF FUNDS

The amount of \$60,000 will be available to fund the grant beginning October 1, 1992 and ending September 30, 1993, for a 12-month project and budget period. No continuation of this project is anticipated beyond the 12-month period.

PURPOSE

The purpose of this grant is to provide support for the dissemination of information from programs relating to adolescent premarital sexual relations, pregnancy, and parenthood, with a focus on black youth.

E.O. 12372 REVIEW

E.O. 12372 is not applicable to this award.

CFDA NUMBER

The Catalog of Federal Domestic Assistance Number is 93.111

WHERE TO OBTAIN ADDITIONAL INFORMATION

Additional program information may be obtained from Patricia Funderburk, Director, Office of Adolescent Pregnancy Programs, Office of Population Affairs, room 736E, H.H.H. Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone 202-690-7473. Questions on business management issues should be directed to Barbara N. Rosenberg, Grants Management Officer, Office of Population Affairs, room 736E, H.H.H. Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone 202-690-6146.

Dated: October 20, 1992.

William R. Archer III,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 92-27294 Filed 11-10-92; 8:45 am]

BILLING CODE 4160-17-M

Agency for Toxic Substances and Disease Registry

[ATSDR-57]

Availability of Guidance Documents for the Management of Contaminated Patients

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of two guidance documents for the management of contaminated patients.

DATES: These documents are currently available.

SUPPLEMENTARY INFORMATION: Section 104(i)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42

U.S.C. 9604(i)(14)), provides the Administrator for ATSDR with authority to assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational material (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances, through such means as the Administrator of ATSDR deems appropriate.

All hospital and community emergency response systems may not be prepared to respond to a hazardous material incident to the same degree. Because of this inconsistency in the response network, ATSDR has developed two guidance documents to help support the hospital and community emergency response systems. These documents may be used as a measure to assess capabilities with respect to potential community hazards, and to develop response plans utilizing national and community-specific resources. Worker health and safety and training are presented as one of the key factors in effective management of medical emergencies. These documents are also intended to provide primary source material for development of local training and safety protocols.

AVAILABILITY: The guidance documents listed below are available at no charge by mail through ATSDR c/o Centers for Disease Control, Publications Warehouse, 5665 New Peachtree Road, Atlanta, Georgia 30341, telephone (404) 488-4990.

Managing Hazardous Materials Incidents**Volume I**

"Emergency Medical Services: A Planning Guide for the Management of Contaminated Patients"

Volume II

"Hospital Emergency Departments: A Planning Guide for the Management of Contaminated Patients"

Note: These documents were formerly titled "CHEMICAL EMERGENCIES: HOSPITAL EMERGENCY DEPARTMENT GUIDELINES" AND "CHEMICAL EMERGENCIES: GUIDANCE FOR THE MANAGEMENT OF CHEMICALLY CONTAMINATED PATIENTS IN THE PREHOSPITAL SETTING."

FOR FURTHER INFORMATION CONTACT: C. Harold Emmett, Branch Chief, Emergency Response Consultation Branch, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600

Clifton Road, NE., Mailstop E-57, Atlanta, Georgia 30333, telephone (404) 639-6360

Dated: November 2, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-27336 Filed 11-10-92; 8:45 am]

BILLING CODE 4160-70-M

Administration for Children and Families**Office of Refugee Resettlement; Agency Information Collection Under OMB Review**

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of information collection requirements previously approved by OMB under Control Number 0970-0034. These reports will expire on January 31, 1993. These requests title "Refugee Unaccompanied Minor Placement Report (Form ORM-3) and Refugee Unaccompanied Minor Progress Report (Form ORR-4)" and being submitted by the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, of the Office of Information Systems management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approved for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Refugee Unaccompanied Minor Placement Report (Form ORR-3) and Refugee unaccompanied Minor Progress Report (Form ORR-4).

OMB No.: 0970-0034.

Description: The Office of Refugee Resettlement, ACF uses two report forms for the collection of information to meet the various statutory and regulatory requirements of the Immigration and Nationality Act concerning unaccompanied refugee minors. The Placement Report (Form ORR-3) is submitted upon the initial placement of the child in the State and whenever there is a change in the child's status including termination from the

program. The Progress Report (Form ORR-4) is required annually to indicate the child's progress towards established goals which are maintained in a case plan for each child and to indicate the efforts of the social service provider toward family reunification.

Section 412(d)(2)(B)(ii) of the Act provides that the Director of the Office of Refugee Resettlement (ORR) must attempt to arrange for the placement under the laws of the receptive State of a refugee child who is unaccompanied by a parent or other close adult relative, who have been accepted for admission to the United States or who has otherwise entered the United States. During any interim period, while the child is in the United States or in transit to the United States but before the child is to be placed, the Director, ORR must assume legal responsibility for the child, (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care. The Director, ORR is authorized to enter into contracts with public or private nonprofit agencies to carry out these responsibilities.

The Director is also required to prepare and maintain a list of all such unaccompanied children, the names and last known residence of their parents (if living) at the time of arrival, and the children's location, status, and progress. Also, under provisions of section 413(a)(2)(G) of the Act, the Director, ORR is required to submit a report to the U.S. Congress following the end of each fiscal year which summarizes the location and status of unaccompanied refugee children admitted to the United States.

Annual Number of Respondents: 3400.

Annual Frequency: 1.

Average Burden Hours Per Response: 25 to .42.

Total Burden Hours: 1,017.

Dated: November 2, 1992.

Larry Guerrero,

Deputy Director, Office of Information,
Systems Management.

[FR Doc. 92-27301 Filed 11-10-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families; Administration on Children, Youth and Families, Children's Bureau, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of new data and information collection required at sections 658K of the Child Care and Development Block Grant Act and 45 CFR 98.70 and 98.71 which establish grantee interim reporting requirements for the annual reports to the Secretary. This information collection request entitled "Child Care and Development Block Grant Interim Reporting Requirements" is submitted by the Child Care Division, Children's Bureau, Administration on Children Youth and Families (ACYF), within the Administration for Children and Families (ACF).

The Administration for Children and Families is requesting an expedited review by the Office of Management and Budget in order for these reports to be submitted to ACF by December 31, 1992. Therefore, as prescribed by the Federal Paperwork Reduction Act (44 U.S.C. chapter 35) for expedited reviews of information collections activities, we are including in this notice a copy of the data collection instrument, together with related instructions and justification, as part of the **Federal Register** notice for review by the general public. The ACF requests that OMB complete the expedited review process by November 16, 1992.

Because of the timeframe in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB desk officer designated below by telephone or by express mail. Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503 (202) 395-7316.

Reporting Burden: The estimate of annual reporting burden is as follows.

Number of respondents (Lead agencies): 255

Number of responses per Grantee: 1

Person hours per report: 50

Total burden hours: 12,750

Additional Information: The first report shall be an interim report covering expenditures through September 30, 1992 for activities undertaken with FY 1991 funds. The grantees must report, at minimum, the following information: (1) The uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses; and (2) the extent to which the affordability and availability of child care services has increased.

To the extent data are reasonably available, Grantees must also report data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning: The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee; salaries and other compensation paid to full- and part-time staff who provide child care services; and activities to encourage public-private partnerships that promote business involvement in meeting child care needs.

Additionally, if applicable, Grantees must describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews. Grantees must also include, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c), and Grantees must describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care.

BILLING CODE 4130-01-M

CHILD CARE AND DEVELOPMENT BLOCK GRANT INTERIM REPORT REPORT ON SERVICES PROVIDED FROM SEPTEMBER 7, 1991 THROUGH SEPTEMBER 30, 1992												
OMB Approval No.: xxxx-xxxx Expires: xx/xx/xx												
CATEGORY/TYPE OF CHILD CARE												
COMPLETE NAME OF STATE/TRIBAL GRANTEE	ADDRESS:	CONTACT PERSON:	(a) TOTAL	CARE PROVIDED BY A "BLOCK GRANT REGISTERED" PROVIDER IN A				CARE PROVIDED BY A LICENSED OR REGULATED PROVIDER (i.e., A PROVIDER NOT SUBJECT TO BLOCK GRANT REGISTRATION REQUIREMENTS) IN A				
				CHILD'S HOME BY A		FAMILY HOME BY A		GROUP HOME BY A		(h) CENTER	(i) CHILD'S HOME	(j) FAMILY HOME
				(b) Relative	(c) Non- relative	(d) Relative	(e) Non- relative	(f) Relative	(g) Non- relative			
1. Number of families receiving child care services												
2. Number of children receiving child care services												
3. Age breakdown of children receiving child care services												
a. 0 - 1 year												
b. 2 - 3 years												
c. 4 - 5 years												
d. 6 - 12 years												
e. 0 - 12 years (sum of rows 3a through 3d)												
f. 13 - and older												
4. Number of children receiving child care services because:												
a. Parent is (or parents are) working												
b. Parent is (or parents are) in training												
c. Parent is (or parents are) in an education program												
d. Child is receiving or in need of protective services												
5. Number of children receiving child care services paid for through												
a. certificates												
b. grants or contracts												
6. Average number of hours of child care service provided per child per week												
7. Average hourly rate paid for child care service per child												

CHILD CARE AND DEVELOPMENT BLOCK GRANT INTERIM REPORT REPORT ON EXPENDITURES FROM NOVEMBER 5, 1990 THROUGH SEPTEMBER 30, 1992		OMB Approval No.: xxxx-xxxx Expires: xx/xx/xx
COMPLETE NAME OF STATE/TRIBAL GRANTEE: _____ ADDRESS: _____		
CONTACT PERSON: _____		TOTAL GRANT: \$ _____
USES FOR WHICH THE GRANTEE EXPENDED FUNDS		
1. Expenditures for child care services authorized under 45 CFR 98.50(a)(1) [75% funds] purchased through: <ul style="list-style-type: none"> a. certificates b. grants and contracts 		
2. Expenditures for the following other activities authorized under 45 CFR 98.50(a)(2) & (3) [75% funds]: <ul style="list-style-type: none"> a. administration b. activities to establish, expand and conduct before- and after-school care services c. activities to establish, expand and conduct early childhood development programs d. resource and referral e. grants or loans to assist providers in meeting child care standards f. monitoring g. training and technical assistance h. improving compensation for staff who provide child care services i. other authorized activities 		
3. Expenditures for the following activities to increase the availability of early childhood development programs and before- and after-school care services authorized under 45 CFR 98.51(b)(1) [25% funds]: <ul style="list-style-type: none"> a. direct provision of before- and after-school care services b. otherwise establishing, expanding, and conducting before- and after-school care c. direct provision of early childhood development child care services d. otherwise establishing, expanding, and conducting early childhood development programs 		
4. Expenditures for the following activities to improve the quality of child care authorized under 45 CFR 98.51(b)(2) [25% funds]: <ul style="list-style-type: none"> a. resource and referral b. grants or loans to assist providers in meeting child care standards c. monitoring d. training and technical assistance e. improving compensation for staff who provide child care services 		

If applicable (pursuant to 45 CFR 98.71(c)), attach an explanation of the rationale for any reduction in the level of standards applicable to any child care services provided in the area served by the Grantee after November 5, 1990.

BILLING CODE 4130-01-C

Instructions for Completing the Child Care and Development Block Grant (CCDBG) Interim Report

General Information: The CCDBG Interim Report, form ACF-700, is designed to collect information on child care services and other authorized activities provided under the Child Care and Development Block Grant. The form consists of two sections. The first section (page one) collects data on families and children receiving CCDBG funded child care services. The second section (page 2) collects data on the uses for which Grantees expended funds and the amounts expended. This information collection is mandated by section 658K of the Child Care and Development Block Grant Act of 1990 and by the final CCDBG regulation published on August 4, 1992 (45 CFR 98.70 and 98.71). Data for all items in the Interim Report are required of all State, Territorial, and Tribal CCDBG lead agencies administering or supervising the administration of approved CCDBG plans.

Data entered on form ACF-700 must correspond with the definitions and instructions contained in this transmittal.

Report Period: This Interim Report must include information on the following: (1) All children and families receiving child care services purchased with CCDBG funds during the period September 7, 1991–September 30, 1992; and 2) all actual expenditures of CCDBG funds made during the reporting period, i.e., November 5, 1990–September 30, 1992.

Inquiries: For additional information or guidance, contact the appropriate Regional Administrator for Children and Families (see attached list).

Submittal Procedure: Copies of form ACF-700 should be submitted to the appropriate Regional Administrator and to: Division of Child Care, ACF/ACYF/CB, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees may use any available information technology to reduce the reporting burden. Grantees may choose to submit the data electronically; alternatively, they may submit a completed copy of the reporting form. ACF Regional Offices will make diskette copies of the reporting form available to grantees on request.

Submittal Deadline: The Interim Report must be submitted to the appropriate offices no later than December 31, 1992. Grantees that cannot submit a complete Report by this deadline must contact the appropriate Regional Office by December 31, 1992, explain why they cannot meet the

deadline and indicate when they will be able to provide all of the required information. Grantees that cannot submit a complete Report by the deadline should provide all data that are available by the deadline.

Additional Information to be Reported: Pursuant to 45 CFR 98.71(d), Grantees must describe the findings of their reviews of licensing and regulatory requirements and policies, including a description of actions taken by Grantees in response to such reviews. Grantees must submit this required description in either the Interim Report due December 31, 1992, or in the annual report due December 31, 1993.

Pursuant to 45 CFR 98.71(e), Grantees must describe, if applicable, any Grantee action which reduces the level of child care standards. Such a description, if applicable, must be included along with the Interim Report.

Additionally, pursuant to 45 CFR 98.71(f), Grantees must describe the standards and health and safety requirements applicable to child care providers in the area served by the Grantee, including a description of Grantee efforts to improve the quality of child care. The Administration on Children, Youth and Families (ACYF) will issue additional guidance related to the submission of this material during FY 1993.

Future Reports: Instructions and the reporting format for the annual reports, the first of which is due December 31, 1993, will be issued at a later date. The requirements for the annual report will address the additional information which Grantees must submit as it is available, including: The number of children being assisted by CCDBG and other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the Grantee's service area; salaries and other compensation paid to full- and part-time child care providers; and activities to encourage public-private partnerships that promote business involvement in meeting child care needs.

Reporting Burden: The public reporting burden for this collection of information requested in this Interim Report is estimated to average 50 hours per response, including the time for reviewing the instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the reporting form. Send comments regarding the burden estimate or any other aspect of this information collection, including suggestions for reducing this burden, to: The Division of Child Care, ACF/ACYF/CB, 370 L'Enfant Promenade, SW.,

Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

General Instructions for Completing Form ACF-700

- Enter the (State or Tribal) Grantee's name at the top of each page of the report form. Also enter the Grantee's address and the name of a contact person.
- Include only child care and authorized activities for which CCDBG funds are expended (i.e., through direct provision of service, cash payments to providers or recipients, certificates, or any other activity contained in the Grantee's approved CCDBG Plan).
- Round expenditures to the nearest dollar (i.e., omit cents). All CCDBG expenditures reported should reflect the actual payments made during the report period, regardless of when the child care services were rendered. Similarly, Grantees are to report the actual number of families and children provided services during the reporting period (i.e., between September 7, 1991 and September 30, 1992) regardless of when actual payments for those services are made. For example, for services rendered in September, 1992, but paid for in October, 1992, Grantees should include the service in this report, but should not include the expenditure, which falls outside the reporting period. (In this example, the amount that is yet to be paid to the provider would constitute an "unliquidated obligation"; see the preamble to 45 CFR 98.64 for a further discussion of "expenditures" and "unliquidated obligations.")
- In counting numbers of children receiving child care services, count only eligible children receiving child care from an eligible provider. For the purposes of page 1 of form ACF-700, Grantees should not count families or children who generally benefited from a grant or contract to establish, expand, or conduct before- and after-school care and early childhood development programs. Additionally, Grantees should not count families or children who generally benefited from an expansion of quality activities accomplished with CCDBG funds.
- Within each column ((a) through (l)) on page 1 of the Interim Report, count each child or family assisted, not the number of transactions. That is, count each child and each family only once, even if the child or family has exited and re-entered the program. However, families or children may be counted in

more than one column as appropriate. For example, a family or a child may receive assistance from more than one type of child care provider if different child care arrangements are used for different portions of the typical day, week, or month. This form consists of non-overlapping categories and should provide only unduplicated counts within each column.

—Report all data requested. When data cannot be reported, enter the appropriate notation from the list below:

(1) Enter NA, for not applicable, if the requested data are not applicable to the Grantee. For example, if the Grantee does not recognize a separate "group home" category of child care that meets the definition set for this report, the Grantee should: (a) Enter NA in the "group home" columns of the report; and (b) include the children receiving care in "group home" settings in the count of children receiving care in "family home" settings.

(2) Enter zero (0) to report that no children or families for a data field and the data are applicable to the Grantee. For instance, the Grantee operates an approved CCDBG Program but no children receive "in-home" child care. Also, enter zero (0) on page 2 of the Interim Report to report no expenditures for an activity.

(3) Enter a dash (-) to report that complete requested data are not available for submission at the time the Interim Report is submitted. When complete data are not available, the Grantee should include an explanation in a footnote or attachment and submit the missing data as soon as they are available (see additional instructions under Submittal Deadline above). For example, if the Grantee does not have complete data available for the different ages of children listed in page 1, row 3 of the report, the Grantee should enter dashes where applicable. Such a grantee should be able, at minimum, to provide the total number of children served age 12 and under, as well as the total number of children age 13 and above.

ACF-700 PAGE 1, Specific Column-by-Column Instructions: For the reporting period, enter data in each column to reflect the information requested in the captions on each row.

Note: If a child changes column-wise status, i.e., the category/type of child care has changed during the period of service, the child should be counted only in the column of his/her latest status so as to preserve an unduplicated count across columns. Thus, if a child had previously received service in a family child care home by a "Block Grant Registered" provider who is not a relative and subsequently changed care arrangements

to a non-"Block Grant Registered" (i.e., otherwise licensed or regulated) center, the child should not be included as receiving care in a "FAMILY HOME, BY A BLOCK GRANT REGISTERED PROVIDER, NON-RELATIVE" Under (Column (e)) but rather counted in "CENTER CARE PROVIDED BY A LICENSED OR REGULATED PROVIDER (i.e., A PROVIDER NOT SUBJECT TO BLOCK GRANT REGISTRATION REQUIREMENTS)" (Column (1)).

In the above situation, if a child's age, reason for needing care status, or payment method changed during the reporting period, the child would be counted only in the row describing the child's latest age, reason for needing care status, or payment method as of the end of the reporting period.

Each child may be counted in more than one column if the child receives assistance from more than one type of child care provider because different child care arrangements are used for different portions of the typical day, week, or month.

Columns (a) through (1)—Category/Type of Child Care: (See attached "Definitions" section for the definitions of the types and categories of child care.)

For row (1), enter the total, unduplicated count of families receiving child care services during the reporting period, regardless of when the payment for such services is made.

For row (2), enter the total, unduplicated count of children receiving child care services during the reporting period, regardless of when the payment for such services is made.

For row (3), items (3a) through (3f), enter the total, unduplicated count of children, by age of the child, receiving child care services purchased with CCDBG funds.

For row (4), items (4a) through (4d), enter the total, unduplicated count of children receiving child care services by reason of need.

For row (5), items (5a) and (5b), enter the payment method used to pay for each child's care.

For row (6), enter the average number of hours of child care service provided per child per week.

For row (7), enter the average hourly rate paid for child care service per child.

Column (a)—Total: Enter the total, unduplicated count of families/children receiving child care paid with CCDBG funds during the report period.

Column (b)—Care Provided by a "Block Grant Registered" Provider in a Child's Home, Relative: Enter the total, unduplicated count of children receiving child care in the child's own home (in-home) when the child care provider is a relative and is required to be Block

Grant registered (i.e., is not otherwise licensed or regulated by the Grantee).

Column (c)—Care Provided by a "Block Grant Registered" Provider in a Child's Home, Non-Relative: Enter the total, unduplicated count of children receiving child care in the child's own home (in-home) when the child care provider is not a relative and is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee).

Column (d)—Care Provided by a "Block Grant Registered" Provider in a Family Home, Relative: Enter the total, unduplicated count of children receiving child care in a family child care home when the child care provider is a relative and is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee).

Column (e)—Care Provided by a "Block Grant Registered" Provider in a Family Home Non-Relative: Enter the total, unduplicated count of children receiving child care in a family child care home when the child care provider is not a relative and is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee).

Column (f)—Care provided by a "Block Grant Registered" Provider in a Group Home Relative: Enter the total, unduplicated count of children receiving child care in a group home when the child care provider is a relative and is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee). If the Grantee does not recognize a separate "group home" category of child care that meets the definition set for this report the Grantee should: (1) Enter NA in the "group home" columns of the report; and (2) include the children receiving care in "group home" settings in the count of children receiving care in "family home" settings.

Column (g)—Care Provided by a "Block Grant Registered" Provider in a Group Home, Non-Relative: Enter the total, unduplicated count of children receiving child care in a group home when the child care provider is not a relative and is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee). If the Grantee does not recognize a separate "group home" category of child care that meets the definition set for this report the Grantee should: (1) Enter NA in the "group home" columns of the report; and (2) include the children receiving care in "group home" settings in the count of children receiving care in "family home" settings.

Column (h)—Care Provided by a "Block Grant Registered" Provider in a Center: Enter the total, unduplicated count of children receiving child care in a center when the child care provider is required to be Block Grant registered (i.e., is not otherwise licensed or regulated by the Grantee).

Column (i)—Care Provided by a Licensed or Regulated Provider in a Child's Home: Enter the total, unduplicated count of children receiving child care in the child's own home (in-home) when the child care provider is NOT required to be Block Grant registered (i.e., is otherwise licensed or regulated by the Grantee).

Column (j)—Care Provided by a Licensed or Regulated Provider in a Family Home: Enter the total, unduplicated count of children receiving child care in a family child care home when the child care provider is not required to be Block Grant registered (i.e., is otherwise licensed or regulated by the Grantee).

Column (k)—Care Provided by a Licensed or Regulated Provider in a Group Home: Enter the total, unduplicated count of children receiving child care in a group home when the child care provider is NOT required to be Block Grant registered (i.e., is otherwise licensed or regulated by the Grantee). If the Grantee does not recognize a separate "group home" category of child care that meets the definition set for this report the Grantee should: (1) Enter NA in the "group home" columns of the report; and (2) include the children receiving care in "group home" settings in the count of children receiving care in "family home" settings.

Column (l)—Care Provided by a Licensed or Regulated Provider in a Center: Enter the total, unduplicated count of children receiving child care in a center-based facility (child care center) when the child care provided is NOT required to be Block Grant registered (i.e., is otherwise licensed or regulated by the Grantee).

ACF-700 PAGE 1, Specific Row-by-Row Instructions: For the reporting period, enter data in each row to reflect the information requested in the headings for each column.

Note: If a family or child changes row-wise status, e.g., if a child's reason for needing care changed during the reporting period, the child would be counted only in the row describing the reason for the child needing care as of the end of the reporting period (or whenever care stopped, if before the end of the reporting period).

Row 1—Number of Families Receiving Child Care Services: Enter the total, unduplicated count of families

receiving child care services during the reporting period, regardless of when the payment for such services is made.

Row 2—Number of Children Receiving Child Care Services: Enter the total, unduplicated count of children receiving child care services.

Row 3, items 3a through 3f—Age Breakdown of Children Receiving Child Care Services: Enter the total, unduplicated count of children receiving child care services by age of the child. In all columns, items 3a through 3d should equal 3e (if all data are reported).

Row 5, items 4a through 4d—number of children receiving child care services because: Enter the total, unduplicated count of children receiving child care services by reason of need (i.e., because a parent or parents is/are working, is/are in training or in an education program, or because the child is receiving or needs to receive protective services) consistent with the definitions in section 3.8 of the Grantee's CCDBG Plan. If more than one reason applies, enter the reason most closely associated with the Grantee's decision to provide child care services.

Row 5, items 5a and 5b—number of children receiving child care services paid for through: Enter the number of children whose child care is purchased using certificates and the number of children whose child care is paid for via grants or contracts.

Row 6—average number of hours of child care service provided per child per week: Enter the average number of hours of child care service per child (purchased with CCDBG funds). Grantees that do not collect his information (i.e., that do not know the actual number of hour of service provided with CCDBG funds per child) can calculate the average number of hours of child care authorized per child per week by multiplying the average number of "full" and "part" days of child care service purchased with CCDBG funds by the maximum number of hours of service that these definitions represent. That is, if a particular Grantee were to consider care of four hours per day or fewer to be a "part" day, then that Grantee would multiply the number of "part" days provided per week by four.

Row 7—average hourly rate paid for child care service per child: Enter the average hourly rate paid per child for child care service provided. Provide information only on services paid for with CCDBG funds. Grantees that do not collect this information (i.e., that do not know the actual number of hours of service provided with CCDBG funds per child) can calculate the average hourly

rate paid for child care service by dividing the rate paid to a particular type or category of provider for each "full" or "part" day by the number of hours of service that these definitions represent. That is, if a Grantee were to consider care of four hours per day or fewer to be a "part" day, then that Grantee would divide the average rate paid to a given category or type of provider per "part" day of service by four to calculate the average hourly rate paid.

ACF-700 Page 2 Instructions: For the reporting period, enter data in the "Total Expenditures" column to reflect the expenditure information requested in the captions on each row. Enter zero (0) to report no expenditures for a data field. For example, the Grantee made no expenditures for before- and after-school programs during the reporting period.

ACF-700 Page 2, Specific Row-by-Row Instructions: For the reporting period, enter data in each row. Tribal Grantees must include expenditures of base amount funds provided pursuant to 45 CFR 98.62(b) in the row that most accurately describes the expenditure.

Row 1, items 1a and 1b—expenditures for child care services authorized under 45 CFR 98.50(A)(1) purchased through: Enter the total, unduplicated amount expended by the grantee during the reporting period to provide child care services pursuant to 45 CFR 98.50(a)(1).

Row 2, items 2a through 2i—expenditures for the following other authorized activities authorized under 45 CFR 98.50(A)(2): Enter the total, unduplicated amount expended by the Grantee during the reporting period to fund other authorized activities pursuant to 45 CFR 98.50(a)(2).

Row 3, items 3a through 3d—expenditures for the following activities to increase the availability of early childhood development programs and before- and after-school care services authorized under 45 CFR 98.51(B)(1): Enter the total, unduplicated amount expended by the Grantee during the reporting period to fund early childhood development and before- and after-school services pursuant to 45 CFR 98.51(b)(1). Pursuant to the preamble discussion at 45 CFR 98.51, report separately on funds used for the direct provision of child care services (i.e., 3a and 3c) and funds used to otherwise "establish, expand, or conduct" such programs (i.e., 3b and 3d).

Row 4, items 4a through 4e—expenditures for the following activities to improve the quality of child care authorized under 45 CFR 98.51(B)(2): Enter the total, unduplicated amount

expended by the Grantee during the reporting period to fund activities to improve the quality of child care pursuant to 45 CFR 98.51(b)(2).

Consistency checks, page 1: For all elements, items 3a through 3d should add up to item 3e. For all elements, the sum of items 3e and 3f and the sum of items 4a through 4d should equal the number reported in row 2. Additionally, for all rows and items except rows 1, 6, and 7, the sum of columns (b) through (1) should be equal to column (a).

Consistency Checks, Page 2: For all Grantees, the sum of items 1a and 1b, items 2a through 2i, items 3a through 3d, and items 4a through 4e should be equal to or less than the Grantee's total CCDBG allotment. Additionally, for State and Territorial Grantees, if the Grantee has expended its entire CCDBG allotment: (1) Items 1a and 1b will equal at least 63.75 percent of the Grantee's total allotment, but will be less than 75 percent of the total allotment; (2) the sum of items 2a through 2i must be no more than 11.25 percent of the total allotment; (3) the sum of items 3a through 3d must be equal to at least 18.75 percent of the Grantee's total allotment, but no more than 20 percent of the total allotment; (4) the sum of items 4a through 4e must be equal to at least 5 percent of the Grantee's total allotment, but no more than 6.25 percent of the total allotment; (5) the sum of items 1a, 1b, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, and 2i must total 75 percent of the Grantee's total CCDBG allotment; and (6) the sum of items 3a, 3b, 3c, 3d, 4a, 4b, 4c, 4d, and 4e must total 25 percent of the Grantee's total CCDBG allotment. (These percentages will not apply for Tribal Grantees; Tribal Grantees are required to include their base amount allocations provided pursuant to 45 CFR 98.62(b) in the row that most accurately describes the expenditure.)

Definitions for Form ACF-700

Child Care Services

Child care services means care given to an eligible child by an eligible provider which the Grantee paid for through assistance directly to the parent or to the provider. Child care services funded under the 75 percent portion of the Block Grant includes either assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates. The definition also includes child care services provided through child care slots purchased through grants or contracts under the 25 percent portion of the Block Grant. The term does not include grants or contracts to establish

or expand and conduct before- and after-school care and early childhood development which generally benefit the children attending the program.

Relative

For the purpose of this report, relatives may include persons who are, by marriage, blood relationship, or court decree, brothers, sisters, first cousins, nephews, or nieces, as well as grandparents, aunts, and uncles. Consistent with the Act and the final regulation, however, only grandparents, aunts, and uncles may (at Grantee option) be exempt from minimum health and safety requirements established by the Grantee.

Block Grant Registered Provider

A "Block Grant registered" provider is subject to the registration process imposed by the Block Grant (in accordance with 45 CFR 98.45) because the provider is not otherwise licensed or regulated by the Grantee.

Licensed or Regulated Provider

A provider not subject to the registration process imposed by the Block Grant in accordance with 45 CFR 98.45 because the provider is otherwise licensed or regulated under State or local law.

Care provided by a "Block Grant registered" provider in a child's own home: Care in the child's own home means care provided during a portion of the 24-hour day by an eligible, "Block Grant registered" provider.

Care provided by a "Block Grant registered" provider in a family home: Care in a family home means care provided by one individual who provides care as the sole caregiver in a private residence other than the child's residence during a portion of the 24-hour day and the provider is an eligible, "Block Grant registered" provider.

Care provided by a "Block Grant registered" provider in a group home: Care in a group home means care provided by two or more individuals in a private residence other than the child's residence during a portion of the 24-hour day and the provider is an eligible, "Block Grant registered" provider.

Care provided by a "Block Grant registered" provider in a child care center: Care in a child care center means care provided by a provider authorized to provide child care services during a portion of the 24-hour day in a non-residential setting and the provider is an eligible, "Block Grant registered" provider.

Care provided by a licensed or regulated provider in a child's own

home: Care in the child's own home means care provided during a portion of the 24-hour day by a licensed or regulated provider.

Care provided by a licensed or regulated provider in a family home:

Care in a family home means care provided by one individual who provides care as a sole caregiver in a private residence other than the child's residence during a portion of the 24-hour day and the provider is a licensed or regulated provider.

Care provided by a licensed or regulated provider in a group home:

Care in a group home means care provided by two or more individuals in a private residence other than the child's residence during a portion of the 24-hour day and the provider is a licensed or regulated provider.

Care provided by a licensed or regulated provider in a child care center: Care in a child care center means care provided by a provider authorized to provide child care services during a portion of the 24-hour day in a non-residential setting and the provider is a licensed or regulated provider.

Justification and Use of Data Collection: The Child Care and Development Block Grant Act (the Act) established the Child Care and Development Block Grant (CCDBG). The purpose of the CCDBG is to increase the availability, affordability, and quality of child care and to improve the quality and availability of early childhood development and before- and after-school services. To afford parents a broad range of choices and services, CCDBG offers Federal funds to States, Tribes, Tribal Organizations and Territories to provide grants, contracts, and certificates for child care to low income families.

Section 658L of the Act requires the Secretary of the Department of Health and Human Services to submit a report to Congress that contains a summary and analysis of the data and information provided in the annual reports from Grantees. In addition, the information from the Interim Reporting Requirements will be used to assess the extent to which CCDBG funds are being used to increase the availability and affordability of child care. The data collected will also serve as a source of information for the provision of technical assistance to the Grantees.

Dated: October 30, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-27350 Filed 11-10-92; 8:45 am]

BILLING CODE 4130-01-M

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 1994

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for fiscal year 1994.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1994, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: L. Bryant Tudor, (202) 690-6275.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes \$2.8 billion for Fiscal Year 1994 and provides that it be allocated as follows: (1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to \$2.8 billion as its allocation for Fiscal Year 1981 bore to \$2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the \$2.8 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1993, the allotments are based upon the Bureau of Census population statistics contained in its reports "Estimates of the Resident Population of States: July 1, 1991 and April 1, 1990 Census" published December 1991, and "1990 Census of Population and Housing" (CPH-6-AS and CPH-6-CNMI) published April 1992,

which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1993.

FISCAL YEAR 1994 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Total
Alabama.....	\$2,800,000,000
Alaska.....	45,147,699
American Samoa.....	6,293,516
Arizona.....	104,188
Arkansas.....	41,404,713
California.....	26,189,861
Colorado.....	335,433,377
Connecticut.....	37,286,324
Delaware.....	36,336,776
Dist. of Col.....	7,508,055
Florida.....	6,602,671
Georgia.....	146,583,724
Guam.....	73,126,243
Hawaii.....	482,759
Idaho.....	12,531,826
Illinois.....	11,471,866
Indiana.....	127,438,184
Iowa.....	61,941,450
Kansas.....	30,860,312
Kentucky.....	27,547,935
Louisiana.....	40,996,186
Maine.....	46,947,423
Maryland.....	13,635,952
Massachusetts.....	53,660,507
Michigan.....	66,192,334
Minnesota.....	103,434,492
Mississippi.....	48,934,850
Missouri.....	28,618,937
Montana.....	56,950,802
Nebraska.....	8,921,335
Nevada.....	17,588,722
New Hampshire.....	14,176,974
New Jersey.....	12,200,589
New Mexico.....	85,680,152
New York.....	17,091,665
North Carolina.....	199,383,946
North Dakota.....	74,384,946
Northern Mariana Islands.....	7,011,198
Ohio.....	96,552
Oklahoma.....	120,780,307
Oregon.....	35,055,990
Pennsylvania.....	32,262,552
Puerto Rico.....	132,064,471
Rhode Island.....	14,482,759
South Carolina.....	11,085,422
South Dakota.....	39,306,874
Tennessee.....	7,762,003
Texas.....	54,687,344
Utah.....	191,543,721
Vermont.....	19,543,024
Virgin Islands.....	6,260,393
Virginia.....	482,759
Washington.....	69,405,339
West Virginia.....	55,405,026
Wisconsin.....	19,885,303
Wyoming.....	54,709,427
	5,078,978

Dated: November 3, 1992.

Eunice S. Thomas,

Director, Office of Community Services.

[FR Doc. 92-27383 Filed 11-10-92; 8:45 am]

BILLING CODE 4130-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of Altered Systems

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of alteration of an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify the existing system of records, the "Peer Review Organization (PRO) Data Management Information System (PDMIS)," HHS/HCFA/HSQB 09-70-1512 published in the *Federal Register* on November 10, 1988, (53 FR 45588). We have provided background information about the system and the proposed modification in the "Supplementary Information" section below. Although the Privacy Act requires that only the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a report of an altered system of records with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on November 12, 1992, pursuant to paragraph 4b(3) of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. The altered system of records including routine uses will become effective January 11, 1993, unless HCFA receives comments which would necessitate changes to the proposed modification. Comments regarding routine uses must be submitted by December 14, 1992.

ADDRESSES: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 2-H-4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Michael Rappaport, Office of Peer Review, Health Standards and Quality Bureau, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland, 21207-5187, telephone number (410) 966-6759, or Tina Donahue, Office of Peer Review, Health Standards

and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland, 21207-5187, telephone number (410) 966-7207.

SUPPLEMENTARY INFORMATION:

Notification of the proposed establishment of the PDMIS was published in the *Federal Register* on November 10, 1988, (53 45588) and became effective on January 9, 1989. This system was established to enable Utilization and Quality Control PROs to collect and report to HCFA medical review data for an individual Medicare beneficiary. (PROs are medical review organizations under contract with HCFA to implement and operate a review system to assure the quality of services for which payment may be made, in whole or in part, under title XVIII of the Social Security Act and a utilization review system to eliminate unreasonable, unnecessary and inappropriate care provided to Medicare beneficiaries.) This system was established to collect, track, monitor and analyze the results of PRO review of individual medical records. This system of records also enables HCFA to collect and analyze interventions taken by PROs to correct identified quality and utilization problems. (The records about both review results and interventions are referred to as Peer Review Organization File (PROF) records.)

The purpose of this proposed modification is to provide for the inclusion of two other data collection mechanisms within the existing system of records. The first represents a continuation with modification of the existing data collection, that is, a modified version of the record content to reflect new medical review requirements in new PRO contracts. (Herein, this particular set of records will be referred to as Peer Review Organization Data (PROD) records.) The second will collect results of PRO review of the quality of care provided to Medicare beneficiaries enrolled in risk-sharing health maintenance organizations (HMOs) and competitive medical plans (CMPs). (Herein, this set of records will be referred to as Health Maintenance Organization File (HMOF) records.) All records contained within this system of records will serve the same purpose as the existing records contained within the current system.

PDMIS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the PRO program. The primary function of PDMIS will be to collect, track, monitor, and analyze data resulting from the medical

review activities performed by PROs. In addition, PDMIS will serve as a valuable program evaluation function. The data accumulated in PDMIS will be aggregated and used to generate various reports on a national, regional, or state level identifying the scope, volume, and results of required PRO review activities. Further, data contained within this system will enable HCFA to analyze results of quality review and to focus PRO review efforts on those areas warranting further or additional review. Additionally, collection of intervention information will enable HCFA to assess the effectiveness of PRO interventions in correcting identified physician/provider quality and utilization problems.

The Office of Peer Review within the Health Standards and Quality Bureau (HSQB), the component of HCFA responsible for administering the PRO program, will use these reports to conduct various analyses and analyze PRO performance on a national and PRO-specific level while each HCFA regional office (RO) will address primarily PRO-specific performance. If a particular analysis reveals a significant deficiency, HCFA will pursue further investigation and/or corrective action that may be appropriate. In this manner, PDMIS will be integrated into and will complement other monitoring and oversight activities of the Department of Health and Human Services (HHS), HCFA, and HSQB, thereby helping to ensure that Medicare beneficiaries receive quality medical care.

The PDMIS system was established under the authority of section 1866(a)(1)(E) and (F) of the Social Security Act which requires a hospital participating in the Medicare program to have an agreement with a PRO to review various aspects of the hospital's activities; part B of title XI of the Social Security Act, which established the PRO program; section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist in making certain types of determinations in the Medicare program; section 1874(a) and (b) of the Social Security Act, which authorize the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out functions under the Medicare statute; and section 1876(i)(7) of the Social Security Act authorizing PRO review of services provided by HMOs and CMPs with section 1876 contracts (Medicare risk contracts).

The system is subject to the HHS Privacy Act regulations at 45 CFR part

5b, setting forth the conditions under which information in a system of records shall be made available to the public, and the Freedom of Information Act rules that apply to such disclosures of information including those at 45 CFR part 5. The Privacy Act permits us to disclose information without the written consent of the individual for, among other things, what are known as "routine uses" that must be for purposes that are compatible with the purpose for which we collect the information. A "routine use" merely gives us the ability to disclose records outside HHS under very stringent safeguards. HCFA is extremely sensitive to releasing records under this provision. The proposed "routine uses" in the system meet the compatibility requirement of the Privacy Act since they are consistent with the purposes for which the information was collected, i.e., to monitor and analyze contractor performance in the review of the quality of care provided to Medicare beneficiaries. Release of beneficiary or practitioner-specific information under any condition not explicitly authorized by the Privacy Act (5 U.S.C. 552 (b), (j) or (k)) and by regulations 45 CFR 5b.9(b), 5b.10, and 5b.11 will require authorization from the individual about whom the information pertains. Release of information under the cited provisions will be determined on an individual case-by-case basis.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy. The entire notice, including changes, is being published below for the convenience of the reader.

Dated: November 4, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

SYSTEM NAME:

PRO Data Management Information System (PDMIS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Health Standards and Quality Bureau, Office of Peer Review, Division of Systems Management, 2nd Floor, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187.

Health Care Financing Administration, Regional Offices, See appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries and provider/practitioners within a PRO area (state).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Pro Identifier (PRO ID)*—A unique identifier (alpha/numeric) assigned to the PRO for identification and reporting purposes.

2. *Record Type*—Identifies the type of record being submitted (e.g., new, replacement or cancellation record).

3. *Provider Identifier (Provider ID)*—The actual Medicare provider number assigned to the facility for Medicare billing purposes.

4. *Health Insurance Claim Number*—The Medicare beneficiary's unique Medicare Health Insurance Claim (HIC) Number.

5. *Admission/Service Date*—The date of admission to the provider if inpatient or the date of service if an outpatient in a hospital or an ancillary service center (ASC).

6. *Discharge Date*—If inpatient, the date of discharge from the provider.

7. *Basis for Selection*—The originating category of required review from which the case was selected by the PRO.

8. *Review Selection and Completion Dates*—The date the record was selected and the date medical review of the case was completed.

9. *Completed Review Results*—
—Admission review data (utilization)
—Diagnosis Related Group (DRG) validation data (coding)
—Generic screen data (quality of care)
—Discharge review data (premature discharges)
—Coverage review data
—Waiver of liability data
—Invasive procedure review data
—Prospective payment system (PPS) outlier review data
—Intervening care data
—Beneficiary complaint issues
—Reconsideration and appeals of initial denial determinations
—PRO initiated adjustment data
—Review of hospital initiated notices of non-coverage

10. *Review Type*—Indicates whether the review was performed on a pre-admission, pre-discharge, prepayment or retrospective basis.

11. *Unique Physician Identification Number (UPIN)*—The unique identifier assigned to a physician/practitioner for Medicare billing purposes.

12. *Interventions*—The number/type of interventions taken in response to identified quality, utilization and/or coding problems.

13. *Cost Data*—The amount and type (nurse, physician, administrative, etc.) of

hours/dollars expended to administer the Peer Review Program in the PRO area.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is maintained under the authority of the following provisions of the Social Security Act: Section 1866(a)(1) (E) and (F), section 1876(i)(7), and part B of title XI.

PURPOSE OF THE SYSTEM:

This system will be used to collect data on the selection and subsequent medical review of required areas of review of care provided to Medicare beneficiaries in the acute hospital setting, specialty hospitals, and hospital units exempt from the PPS, swing beds, hospital outpatient areas, ambulatory surgical centers, emergency rooms and HMO clinics and facilities. The system will allow for PRO generation and submission to HCFA of a unique record with all applicable review information relevant to PRO contractor performance and data analysis. The HIC, UPIN and provider numbers are utilized because they represent the only unique constant identifiers available to allow for identification and tracking of a particular record. The HIC number will also eliminate the probability of double counting records when determining the number of reviews performed for PRO payment purposes, and identifying erroneous record submissions. Additionally, this system will allow for project officer and SuperPRO selection of samples for re-review to validate the accuracy of contractor performance. (SuperPRO is an organization under contract with HCFA to make recommendations on the accuracy and quality of PRO medical review determinations.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office in response to an inquiry from that office at the request of the subject individual.
2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when
 - (a) HHS or any component thereof; or
 - (b) Any HHS employee in his or her official capacity; or
 - (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or
 - (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and that the use of such records by the Department of Justice, the tribunal, or the party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided that in each case HHS determines that such disclosure is compatible with the purpose of which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for automated data processing or telecommunications systems containing or supporting records in the system.

4. To a third party where:

(a) HCFA needs information from the third party to verify information relating to program integrity, quality of care, and evaluation and measurement of system activities.

(b) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and

(c) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

5. To a PRO, SuperPRO, an individual or group for research and/or evaluation purposes with regard to payment or provision of health care services or an entity under contract with HCFA or HHS acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary, practitioner or provider-specific information is necessary or relevant to an authorized research/evaluation project or for an official investigation or litigation regarding a specific case, and if HCFA determines:

(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and

(b) That the purpose for which disclosure is to be made:

(1) Is compatible with the purposes for which the records were collected;

(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and

(3) Is of sufficient importance to warrant any effect on the privacy of the

individual that disclosure of the record might bring; and

(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and

(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained at the system location site in magnetic media (e.g., magnetic tape and computer discs).

RETRIEVABILITY:

The data in this system are retrieved by PRO ID, HIC number, UPIN and Provider ID.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure. Access to specific records is limited to those who have a need for them in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system from the date of receipt through the length of their PRO contract). After this period, the records will be stored on magnetic media in a secured location.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6323 Security Boulevard, Baltimore, Maryland 21207-5187.

NOTIFICATION PROCEDURES:

To determine if your record exists, write to the system manager at the address indicated above or to the appropriate regional office (see appendix A), and specify HIC Number, UPIN and/or Provider ID. Notification procedures are governed by 45 U.S.C. 552a(d)(1) and (f) (1), (2) and (3) and by 45 CFR 5b.5 and 5b.6.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the information in the records being sought. You may also request an accounting of disclosures that have been made of your records, if any. Record access procedures are governed by 5

U.S.C. 552a(d)(1) and (f) (2) and (3) and by 45 CFR 5b.5 and 5b.6.

CONTESTING RECORD PROCEDURES:

Contact the system manager named in Paragraph 5 above, identify the relevant record, specify the information to be corrected or amended, and state the corrective action sought and the reasons for requesting the correction or amendment. Include information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction or amendment. Correction/amendment procedures are governed by 5 USC 552a(d)(2) and by 45 CFR 5b.7.

An individual who disagrees with a refusal to correct or amend his record may appeal the refusal by writing to the Director, Health Standards and Quality Bureau, 6300 Security Boulevard, Baltimore, Maryland 21207-5187. Appeal rights and procedures are governed by 5 U.S.C. 552a(d)(3), (4) and (5), and by 45 CFR 5b.8.

RECORD SOURCE CATEGORIES:

These records will be generated by the PRO from data received from HCFA, the servicing fiscal intermediary or carrier responsible for the processing of Medicare hospital bills and from data generated by the PRO itself as a result of performing medical reviews. Other sources of data include Medicare beneficiaries, congressional offices, Medicare providers, Office of Inspector General, etc. The electronic record will only include information to be compiled in the data base (e.g., PROs identifier, HIC, admission/service and discharge dates, review selection and results.)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Health Care Financing Administration Regional Offices

- I. Boston, Project Officer, Peer Review Organization, Room 1309, John F. Kennedy Federal Building, Boston, Massachusetts 02203-0003.
- II. New York, Project Officer, Peer Review Organization, Room 3811, 26 Federal Plaza, New York, New York 10278-0063.
- III. Philadelphia, Project Officer, Peer Review Organization, Room 3100, P.O. Box 7760, Philadelphia, Pennsylvania 19101-7760.
- IV. Atlanta, Project Officer, Peer Review Organization, Suite 701, 101 Marietta Street, Atlanta, Georgia 30323-2711
- V. Chicago, Project Officer, Peer Review Organization, 14th-16th Floors, 105 W. Adams Street, Chicago, Illinois 60603-6201.
- VI. Dallas, Project Officer, Peer Review Organization, Room 2000, 1200 Main Tower Building, Dallas, Texas 75202-4305.

VII. Kansas, Project Officer, Peer Review Organization, New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106-2808.

VIII. Denver, Project Officer, Peer Review Organization, Federal Office Building, Room 1185, 1961 Stout Street, Denver, Colorado 80294-3538.

IX. San Francisco, Project Officer, Peer Review Organization, 4th and 5th Floors, 75 Hawthorne Street, San Francisco, California 94105-3903.

X. Seattle, Project Officer, Peer Review Organization, Mail Stop RX 40, 2201 Sixth Avenue, Seattle, Washington 98121-2500.

[FR Doc. 92-27360 Filed 11-10-92; 8:45 am]

BILLING CODE 4120-03-M

Privacy Act of 1974; Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed name change and additional routine uses for existing system of records.

SUMMARY: One of the top priorities of HHS is to assure high quality and effective health care. As a result of this goal, there have been recent changes in the way HCFA data are managed. Although most databases containing Medicare patient information have been logically divided as either Medicare bill file or Medicare enrollment systems, the Health Insurance Master Record (HIMA), System Number 09-70-0502, contained a combination of enrollment and bill file information. The HIMA is now being phased out, and the appropriate routine uses that were specific to this system are being integrated into either the bill file or enrollment systems. HCFA is proposing to revise the system notice for the "Medicare Bill File (Statistics)," System No. 09-70-0005, by changing its name to the "National Claim History (NCH)" and integrating three routine uses from the HIMA for the release of data. These three routine uses are being carried over from the HIMA in order to continue to accommodate program releases that were previously made under the HIMA. The System of Records which covers enrollment information will be revised separately in order to accomplish this same goal. The HIMA System of Records will then be deleted.

The first routine use will authorize the release of data to the Railroad Retirement Board to facilitate the Railroad Retirement Board's administration of the provisions of both the Railroad Retirement and Social

Security Acts relating to railroad employment.

The second routine use will authorize the release of data to insurance companies, self-insurers, health maintenance organizations (HMOs), multiple employer trusts, and other groups providing protection against medical expenses of their enrollees. This would enable the above to perform the duties of their organizations.

The third routine use will authorize disclosure of data to third parties for Medicare secondary payer (MSP) reasons.

EFFECTIVE DATES: The proposed system name change and addition of the integrated routine uses shall take effect without further notice 30 days from the date of publication in the *Federal Register* (December 14, 1992), unless comments received on or before that date would warrant changes.

ADDRESSES: The public should address comments to Mr. Richard A. De Meo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, room 2-H-4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Kirby, Director, Data Release Policy Staff, Office of Statistics and Data Management, Bureau of Data Management and Strategy, HCFA, room 3-A-12, Security Office Park Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5197, Telephone (410) 597-3855.

SUPPLEMENTARY INFORMATION: We are publishing this notice to inform the public of recent changes in the organization of HCFA data. The NCH was developed as part of HCFA's effort to create a more responsive information environment. The NCH encompasses receipt of paid claims data, quality control and edits of the data, and creation and maintenance of subsystems (databases). NCH will significantly enhance the information available to HCFA for program monitoring and policy development. It contains records on claims for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. The proposed additional routine uses to System Number 09-70-0005 follow:

(10) To the Railroad Retirement Board for administering provisions of both the Railroad Retirement and Social Security Acts relating to railroad employment and/or to the administration of the Medicare program.

(11) To insurance companies, self-insurers, HMOs, multiple employer trusts, and other groups providing protection against medical expenses of their enrollees without the beneficiary's authorization. Information to be disclosed shall be limited to Medicare entitlement, utilization, and payment data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To insurers, underwriters, third party administrators (TPA), self-insurers, group health plans, employers, HMOs, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or TPA, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider Name and Number
- Physician Name and Number
- Supplier Name and Number
- Dates of Service
- Nature of Service
- Diagnosis

To administer the MSP provision at 42 U.S.C. 1395y(b)(1) more effectively,

HCFA would receive from and may disclose to insurers, underwriters, TPAs, self-insureds, etc., the following types of information (to the extent that it is available):

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the MSP provision at 42 U.S.C. 1395y(b)(2) more effectively for entities such as workers' compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number
- Name of Insured¹
- Insurer Name and Address
- Type of Coverage; automobile, medical, no-fault, or liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury, or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (workers' compensation only)

In order to receive this information the entity must agree to the following conditions:

- a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 U.S.C. 1395y(b);
- b. To safeguard the confidentiality of the data and to prevent unauthorized access to it; and

¹ Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. This agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

To administer the MSP provision more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or noncontributory plan, self-insured, re-insured, HMO, TPA insurance.
- Claims payment information; for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full- and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber; for example full- or part-time, self-employed.

The Privacy Act permits us to disclose information without the consent of the individual for what is known as "routine use"—that is, disclosure without consent for purposes that are compatible with the purposes for which we collect the information. The establishment of routine uses does not mandate HCFA to release records with identifiers. These proposed new routine uses for the "National Claims History (NCH)" are consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since they are compatible with the purpose for which the information is collected. Because the addition of these routine uses will not change the purpose for which the information is to be used or otherwise significantly alter the system, we are not required to prepare a report of altered system of records under 5 U.S.C. 552a(r). We are publishing the notice in its entirety below for the convenience of the reader.

Dated: November 5, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

09-70-0005

SYSTEM NAME:

National Claims History (NCH), HHS/NCFA/BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207-5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplementary medical benefits parts of the Medicare program and their referring and servicing physicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data, demographic and identifying data on the beneficiary; diagnosis and procedural codes; provider characteristics and identifying number (including physicians).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 139511).

PURPOSE OF THE SYSTEM:

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

- (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
 - (2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Agency programs.
 - (3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:
 - (a) HHS, or any component thereof; or
 - (b) Any HHS employee in his or her official capacity; or
 - (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
 - (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;
- is party to litigation or has an interest to such litigation, and HHS determines that

the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished;

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

(e) Secures a written statement attesting to the recipient's

understanding and willingness to abide by the provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider; the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission. Each of the Medicare Provider Analysis and Review (MEDPAR) files—short-stay hospital services file, long-term hospital services, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provision for release. The entity must agree:

(a) Not to try to identify individual beneficiaries;

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract);

(c) Not to link this information to other beneficiary-specific records;

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified; and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the quality of care (QC) MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in

improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in appendix A.

The QC MEDPAR file may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section 7.b. are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed.

Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: Marketing, (for example, identification and targeting of under- or over-served health service markets primarily for the purposes of commercial

benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA.

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have 10 or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research or evaluation plan.

(8) To an agency of a State government, or established by State law, for purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

(b) Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

(c) Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that

additional exposure of the record might bring; and

(3) There is a reasonable probability that the objective for the use would be accomplished; and

(d) Requires the receipt to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use on another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have 10 or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(9) With respect to the Medicare mortality information file derived from the MEDPAR file and other files available to HCFA, to individual hospitals that have previously supplied to HCFA the patient-identifiable data included on the file. Release of these data to the hospital would include mortality predictors which have been statistically derived by HCFA from data provided by the hospital, national data, and the number of previous hospitalizations in all hospitals. Certain

conditions must be met before the data are released:

(a) The data may include information only on patients that the requesting hospital has previously supplied plus the mortality predictors;

(b) The hospital administrator must make a specific request for these data in writing. This request must be on hospital letterhead, must associate the need for these data with the hospital's quality of care activities, and must indicate that the hospital will continue to maintain the confidentiality of the data;

(c) A standard fee must be paid, as determined by HCFA, for these data prior to their release to the hospital.

(10) To the Railroad Retirement Board for administering provisions of both the Railroad Retirement and Social Security Acts relating to railroad employment and/or to the administration of the Medicare program.

(11) To insurance companies, self-insurers, Health Maintenance Organizations (HMOs), multiple employer trusts, and other groups providing protection against medical expenses of their enrollees without the beneficiary's authorization. Information to be disclosed shall be limited to Medicare entitlement, utilization, and payment data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To insurers, underwriters, third party administrators (TPAs), self-insurers, group health plans, employers, HMOs, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or TPA, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid agency, State

Worker's Compensation Board, or Department or Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer (MSP) provision at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim

Number

- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional

Payment

- Provider Name and Number
- Physician Name and Number
- Supplier Name and Number
- Dates of Service
- Nature of Service
- Diagnosis

To administer the MSP provision at 42 U.S.C. 1395y(b)(1) more effectively, HCFA would receive from and may disclose to insurers, underwriters, TPAs, self-insureds, etc., the following types of information (to the extent that it is available):

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to

Subscriber

• Insurer/Underwriter/TPA Name and Address

• Insurer/Underwriter/TPA Group Number

• Insurer/Underwriter/TPA Group Name

• Policy Number

• Effective Date of Coverage

• Employer Name, Employer Identification Number (EIN) and Address

• Employment Status

• Amounts of Payment

To administer the MSP provision at 42 U.S.C. 1395y(b)(2) more effectively for entities such as workers' compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security

Number

• Name of Insured*

• Insurer Name and Address

• Type of Coverage; automobile, medical, no-fault, or liability payment, or workers' compensation settlement

- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury, or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (workers' compensation only)
- *Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

- To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 U.S.C. 1395y(b);
- To safeguard the confidentiality of the data and to prevent unauthorized access to it;
- To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. This agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

To administer the MSP provision more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or noncontributory plan, self-insured, reinsured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full- and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber; for example, full- or part-time, self-employed

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by provider number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGER AND ADDRESS:

Director, Bureau of Data Management and Strategy, room 1-A-11, Security Office Park, Baltimore, Maryland 21207-5187.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth, and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient), or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Individuals in the system should also reasonably specify the record contents being sought. (These access procedures are in accordance with the Department regulations [45 CFR 5b.5(a)(2)].)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with

supporting justification. (These procedures are in accordance with Department regulations [45 CFR 5b.7].)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MED-PAR FILE

Data element	Description	Function
1. Hi Claim Number.	Encrypted to protect the identity of the beneficiary.	To determine the number of stays for a beneficiary.
2. Day of Admission.	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.
3. Sex	male female unknown	To measure sex-based differences.
4. Medicare Status Code.	Code to show reason for beneficiary's entitlement. —aged without ESRD. —aged with ESRD. —disabled without ESRD. —disabled with ESRD. —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination.	—To home, self care. —To short-term hospital. —To SNF —To other type facility. —To home health service. —Left against medical advice. —Died —Still a patient	To group stays into Diagnosis Related Groups (DRGs).
6. Medicare Provider Number.	Identification number of hospital.	To allow for review of care on an institution-specific basis.
7. Date of Admission.	Date, plus/minus 1 to 20 days *.	To measure intervals between hospital episodes.
8. Date of Discharge.	Date, plus/minus 1 to 20 days *.	To measure intervals between hospital episodes.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MED-PAR FILE—Continued

Data element	Description	Function
9. Length of Stay.	Number of days in hospital stay.	To examine days of care.
10. Intensive Care and Coronary Care Days.	Days in special care units of hospitals.	To measure outcomes in and use of special care units.
11. Total Charges.	All charge fields (fields 11-21) are in whole dollars.	Charge fields 11-21 are included to measure relative resource use across cases.
12. Routine Accommodation Charges		
13. Intensive Care and Coronary Care Charges		
14. Total Department (Ancillary) Charges		
15. Operating Room Charges		
16. Pharmacy Charges		
17. Laboratory Charges		
18. Radiology Charges		
19. Supplies Charges		
20. Anesthesia Charges		
21. Inhalation Therapy charges		
22. Principal and Other Diagnosis Codes.	Five ICD-9-CM Codes.	Fields 22-23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes.	Three ICD-9-CM Volume 3 codes.	
24. Date of Surgery.	Date, plus/minus 1 to 20 days*.	To measure intervals between admission/discharge and surgery.
25. Blood Furnished.	Number of pints...	To measure outcomes.
26. Diagnosis Related Group.	DRG1-DRG475...	To define diagnostic groups used in the Prospective Payment System.
27. Date of death.	Date, plus/minus 1 to 20 days*.	To determine mortality rates.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MED-PAR FILE—Continued

Data element	Description	Function
28. Urban/rural residence.	1=urban..... 2=rural.....	To examine variations in care in urban and rural areas.
29. Zip-Code.....	5 digit zip.....	To examine variations in care in small areas.
30. Special Unit Code.	S—Psychiatric Unit. T—Rehabilitation Unit. U—Swing-bed Hospital. V—Alcohol/Drug Unit Blank.	Distinguishes PPS-exempt unit records.
31. Beneficiary State of Residence.	Two-position SSA numeric code.	To facilitate seasonal migration studies.
32. Source of Admission.	Admission Type 1, 2, or 3.. 1—Physician Referral. 2—Clinic Referral. 3—HMO Referral. 4—Transfer from Hospital. 5—Transfer from SNF. 6—Transfer from Another Health Care Facility. 7—Emergency Room. 8—Court/Law Enforcement. 9—Unknown Admission Type 4: 1—Normal Delivery. 2—Premature Delivery. 3—Sick Baby..... 4—Extramural..... 5—Unknown.....	To allow analysis of admissions and episodes of care.
33. Type of Admission.	1—Emergency..... 2—Urgent..... 3—Elective..... 4—Newborn..... 9—Unknown.....	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes.	1 through 5.....	Enable search of diagnosis fields.
35. Number of Surgical Codes.	1 through 3.....	Enable search of surgical procedures fields.
36. Actual Age....	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

* The same random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ± through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD-9-CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc. 92-27363 Filed 11-10-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3524]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposed.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and

hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 23, 1992.

John T. Murphy,
Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certificate of Family Participation/Certificate of Family Participation (Spanish Version)
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The

Certificate of Family Participation will indicate the family's responsibilities under the Section 8 Existing Housing Programs and authorize the family to seek an eligible rental unit.

Form Number: HUD-52578 and HUD-52578S.

Respondents: Individuals or households and State or local governments.

Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-53578 and HUD-52578S.....	2,500		100		.05		12,500
Recordkeeping.....	2,500		1		5		12,500

Total Estimated Burden Hours: 25,000.
Status: Reinstatement.

Contact: Gwen Carter, HUD, (202) 708-3887. Angela Antonelli, OMB (202) 395-6880.

Dated: October 23, 1992.

[FR Doc. 92-27273 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-92-3523]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 26, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Termination Suspension or Reinstatement of Assistance Payments Contract

Office: Housing

Description of the Need for the Information and its Proposed Use: The Department will use form HUD-93114 to document, for review and audit, each Section 235 mortgage serviced by or for lending institutions where HUD's financial assistance to qualified low and moderate-income families are terminated, suspended, and/or reinstated.

Form Number: HUD-93114.

Respondents: Individuals or households and businesses or other for-profit.

Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93114.....	962		40		.5		19,240

Total Estimated Burden Hours: 19,240.
Status: Extension.

Contact: Florence Brooks, HUD, (202) 708-1719, Angela Antonelli, OMB, (202) 395-6880.

Dated: October 26, 1992.

Proposal: Study of the Affirmative Fair Housing Marketing Process in Non-Metropolitan Areas

Office: Fair Housing and Equal Opportunity

Description of the Need for the Information and its Proposed Use: A mail survey instrument will be used to

collect data from approximately 90 developers, owners, and/or managers of HUD section 202 and FmHA section 502 and 515 programs. The FmHA section 502 homeownership and 515 rural rental programs serve general populations and the section 202

projects are the only HUD-funded housing still being produced in rural areas. The data collected will also be helpful in developing future policy issues on affirmative marketing and providing technical assistance to and

by HUD/FHEO and FmHA Field staffs.

Form Number: None.

Respondents: Non-profit institutions.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey.....	90		1		.50		45

Total Estimated Burden Hours: 45.

Status: New.

Contact: Beverly J. Butler, HUD, (202) 708-2740, Angela Antonelli, OMB, (202) 395-6880.

[FR Doc. 92-27274 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3434; FR-3203-N-02]

NOFA for a Technical Assistance Communicator for State-Administered Community Development Block Grant (CDBG) Programs; Announcement of Funding Awards

AGENCY: Office of the Assistance Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for a Technical Assistance Communicator for State-Administered Community Development Block Grant (CDBG) Programs. The announcement contains the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Linda Thompson, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1322. The TDD number for the hearing impaired is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to choose an organization to provide communications in the form of information referrals, exchanges, and clearinghouse functions for the benefit

of States administering Community Development Block Grant (CDBG) non-entitlement program funds.

The 1992 award announced in this Notice was selected for funding in a competition announced in a Federal Register Notice published on May 29, 1992 (57 FR 22866). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of \$298,828 was awarded to one organization. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the name, address, and amount of the award as follows:

NOFA for a Technical Assistance Communicator for State-Administered Community Development Block Grant (CDBG) Programs

Council of State Community Development Agencies, suite 224, Washington, DC 20001.....\$298,828
(Mr. John Sidor, Executive Director)

Dated: November 3, 1992.

Randall H. Erben,

Acting Assistant, Secretary for Community Planning and Development.

[FR Doc. 92-27275 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing Federal Housing Commissioner

[Docket No. D-92-1012; FR-3376-D-01]

Order of Succession, Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Order of succession.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner is revising the Order of

Succession of officials authorized to serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the power or perform the duties of the Office.

EFFECTIVE DATE: November 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Oliver Walker, Management Services Division, Office of Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1694. A telecommunications device for deaf persons (TDD) is available at (202) 708-2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This revision of the Order of Succession for the Assistant Secretary for Housing—Federal Housing Commissioner is necessary to reflect the current organizational structure of the Office of Housing. This Order of Succession supersedes the Order of Succession of officials designated to act as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner published on July 8, 1982, at 47 FR 29716. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President, by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner designates the following Order of Succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Housing—Federal Housing Commissioner is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Housing—

Federal Housing Commissioner, the following are hereby designated to serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner with all the powers, functions, and duties delegated or assigned to the Assistant Secretary for Housing—Federal Housing Commissioner:

1. General Deputy Assistant Secretary for Housing
2. Associate General Deputy Assistant Secretary for Housing
3. Deputy Assistant Secretary for Multifamily Housing
4. Deputy Assistant Secretary for Operations
5. Deputy Assistant Secretary for Single Family Housing
6. Housing—FHA Comptroller

These officials shall serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner under this Order of Succession in the order specified herein and no officials shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this Order of Succession are unable to act as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner by reason of absence, disability, or vacancy in office, officials designated to serve as acting officials for these designated officials will serve in this same order of succession. Authorization to serve shall not exceed 120 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Section B. Supersedure

This Order of Succession supersedes the Order published on July 8, 1982 at 47 FR 29716.

Authority: Sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d)

Dated: November 3, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-27276 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-92-3522; FR-3348-C-02]

State and Local Fair Housing Laws: Notice of Certification of Substantially Equivalent Agency—State of Texas; Correction Notice

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice; correction.

SUMMARY: On October 28, 1992 (57 FR 48803), the Department published a notice advising that the Assistant Secretary for Fair Housing and Equal Opportunity had determined that the fair housing law of the State of Texas is substantially equivalent to the Fair Housing Act, and solicited comment from the public on this determination. The purpose of this notice is to correct an editorial error that appeared in that notice, and to clarify that the determination of substantial equivalency is limited to the adequacy of the Texas fair housing law on its face.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5234, Washington, DC 20410, telephone (202) 708-0455. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department of refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.

On October 28, 1992 (57 FR 48803), the Department published a notice advising that the Assistant Secretary for Fair Housing and Equal Opportunity had determined that the fair housing law of the State of Texas is substantially equivalent to the Fair Housing Act, and solicited comment from the public, within 30 days from the date of publication of the notice, on this determination.

In the October 28, 1992 notice, the Department stated that it had executed a Memorandum of Understanding with the agency administering the fair Housing law for the State of Texas in accordance with 24 CFR 115.6(c). This statement was incorrect in that the Department has not executed a Memorandum of Understanding with the State of Texas agency. Rather, the correct statement is that the Department intends to execute a Memorandum of Understanding with the State of Texas agency. This notice makes that correction.

Additionally, in the October 28, 1992 notice, the Department stated in its

concluding paragraph that its determination of substantial equivalency was based on the adequacy of the State of Texas fair housing law on its face. However, the "on its face" determination was not emphasized in the introductory paragraph. This notice, therefore, clarifies that the Assistant Secretary's determination that the State of Texas fair housing law is substantially equivalent to the Fair Housing Act is limited to the adequacy of the law on its face. The notice solicited comments both on that determination and on the proposed determination that the law, in operation, provides rights and remedies which are substantially equivalent to the Fair Housing Act.

Accordingly, the FR Doc. 92-26107 published on October 28, 1992 (57 FR 48803), at page 48803, in the third column, the first sentence and the last sentence of the first paragraph under the subheading "This Notice" is corrected to read as follows: **THIS NOTICE:**

In accordance with 24 CFR 115.6(c)(1), this Notice announces that the Assistant Secretary has determined that the fair housing law of the State of Texas is, on its face, substantially equivalent to the Fair Housing Act. * * * The Department intends to execute a Memorandum of Understanding with this agency in accordance with 24 CFR 115.6(c).

* * * * *

Dated: November 6, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-27422 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-5440-10 ZBAF]

Availability of Draft Supplemental Environmental Impact Statement on Direct Sale of Land to State of California, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is given that the Bureau of Land Management (BLM) has prepared a draft Supplemental Environmental Impact Statement (SEIS) to the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS), State of California Indemnity Selection & Low-Level Radioactive Waste Facility (April 1991). The final EIR/EIS analyzed the environmental

impacts of conveying 1,000 acres under a proposed State of California indemnity selection upon conveyance and issuance of all applicable licenses and permits those lands would be utilized as low-level radioactive waste (LLRW) facility at Ward Valley, approximately 23 miles west of the City of Needles and one mile south of Interstate 40. The State of California recently filed an application (CA-30582) for a proposed conveyance through the indemnity selection process. The sale proposal resulted from a request by the California State Lands Commission that the Bureau suspend processing their indemnity selection pending the California Department of Health Services decision on how to acquire the property. The location, size, and proposed future use of the subject land has not changed from that analyzed in the final EIR/EIS. The draft SEIS evaluates only a different proposed method of land conveyance by direct sale. Since there is no other changes from the final EIR/EIS, except the proposed means of conveyance, the draft supplemental EIS does not address technical, scientific or health issues.

DATES: Written comments will be accepted until December 28, 1992.

ADDRESS: Written comments should be sent to California Desert District, Attn: Ward Valley, 6221 Box Springs, Riverside, CA 92507.

Dated: November 3, 1992.

Jean Rivers-Council,
Acting District Manager.

[FR Doc. 92-27268 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-40-M

[WY-060-93-4320-01]

Meeting of the Casper District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Casper District Grazing Advisory Board.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10 a.m. on December 10, 1992. The meeting will convene at the Casper District Office, 1701 East "E" Street, Casper, Wyoming.

The agenda will include:

- (1) Election of Chairman and Vice-chairman and a brief orientation for new board members;
- (2) A progress report on range improvement projects; and
- (3) A progress report on the district's allotment management plans. The public comment portion is scheduled for 11 a.m., or shortly after. Interested persons

may appear and comment or submit written statements for board consideration.

DATES: December 10, 1992.

FOR FURTHER INFORMATION CONTACT:

To request summary minutes or time on the agenda, contact: Kate Padilla, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, (307) 261-7600.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public.

Summary minutes of the board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Dated: November 5, 1992.

William H. Mortimer,
Acting District Manager.

[FR Doc. 92-27338 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-01-4332-02]

Phoenix District Advisory Council Meeting

December 16, 1992

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets December 16, 1992, at the Wickenburg Community Center, 160 North Valentine, Wickenburg, Arizona, at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

- Update on the proposed Newsboy Mine
- Santa Maria Ranch Status Report
- Status of BLM Actions on Proposed Maricopa County Regional Landfill
- Wilderness Management Planning Schedule
- Vulture Peak Recreation Activity Plan
- BLM Management Updates
- Business from the Floor
- Comments and Statements
- Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land

Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters. Those interested in presenting oral statements to the council are requested to notify the Phoenix District Managers Office, telephone (602) 780-8090 by 2 p.m., December 15, 1992.

Dated: November 2, 1992.

David J. Miller,

Acting District Manager.

[FR Doc. 92-27352 Filed 11-10-92; 8:45 am]

BILLING CODE 4320-02-M

[NM-940-4110-03; NMNM 55990]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97-451, a petition for reinstatement of Oil and Gas Lease NMNM 55990, Lea County, NM, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1992, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 per acre or fraction thereof and 16½ percent, respectively. Payment of a \$500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Minerals Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Martha A. Rivera, BLM, New Mexico State Office, (505) 438-7584.

Dated: October 29, 1992.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 92-27358 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-010-03-4210-05; IDI-29238]

Sale of Public Land; Owyhee County, Idaho**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action, IDI-29238.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, ID

T. 2 N., R. 5 W.,
section 8: S½NE¼SE¼SE¼, N½SE¼SE¼
SE¼;

The area described contains 10 acres in Owyhee County.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Boise District, at the below address. Objections will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, realty action will become the final determination of the Department of the Interior.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, 3948 Development Avenue, Boise, ID 83705.**FOR FURTHER INFORMATION CONTACT:** Blackie Bruegman, Realty Specialist, at the address shown above or (208) 384-3300.**SUPPLEMENTARY INFORMATION:** This land is being offered by direct sale to Owyhee County, ID, for construction of a Tipping Station (solid waste transfer station).

Acceptance of a sale offer will constitute an application for conveyance of that portion of the mineral estate of no known value. A separate non-

refundable fee of \$50 will be required from the purchasers for conveyance of the mineral interests.

The terms and conditions applicable to the sale are:

1. A right-of-way is reserved to the United States for ditches and canals constructed by the authority of the United States pursuant to the act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

2. All oil, gas, and geothermal resources shall be reserved to the United States together with the right to prospect for, mine, and remove the minerals.

Dated: October 27, 1992.

J. David Brunner,
District Manager.

[FR Doc. 92-27357 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-03-4210-05; N-55079]

Direct Sale of Public Land, Washoe County, NV; Realty Action**ACTION:** Notice of realty action, direct sale of public land, Washoe County, Nevada.

SUMMARY: The following described land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 32 N., R. 23 E., Sec. 9, SE¼NE¼SE¼SE¼,
NE¼SE¼SE¼SE¼, N½N½SE¼SE¼S
E¼SE¼, containing approximately 5.625
acres.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to the Gerlach General Improvement District. It has been determined that the subject parcel contains no known mineral values, except geothermal steam and related geothermal resources. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a \$50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 705 East 4th Street, Winnemucca, NV 89445, telephone (702) 623-1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to the Gerlach General Improvement District for operation of a trash transfer station. The site will be used for placement of a large trash container. The container will be removed from the site on a regular basis. This site is necessary since closure of the Gerlach landfill site is anticipated. No trash will remain on site permanently.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. The geothermal steam in the land so patented. And will be subject to:

1. Those rights for road access that will be granted to Washoe County under the authority of Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761).

2. Those rights for geothermal steam leased to San Emidio Resources, Inc. under lease N-55718.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: November 6, 1992.

Ron Wenker,
District Manager.

[FR Doc. 92-27353 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-HC-M

[WY-031-4210-05; WYW 127553]

Realty Action; Request for Sale of Public Land Parcel in Fremont County, WY**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action; request for sale of public land parcel in Fremont County, Wyoming.

SUMMARY: The Bureau of Land Management has received a request from American Nuclear Corporation (ANC) to sell 480 acres of public land in the area commonly referred to as the Gas Hills, Fremont County, Wyoming. The sale was originally described in a notice of realty action (NORA) published in the *Federal Register* on February 18, 1992. The notice is being issued to allow ANC additional time to determine the design and feasibility for their proposed disposal facility. A new BLM serial number WYW 127553 is assigned to this action.

This notice does not constitute endorsement or approval by the Bureau of Land Management. Rather, it serves as a notice to the public that the Bureau of Land Management has received a request from American Nuclear Corporation (ANC) to sell the following described public lands, surface and mineral estates, excepting oil and gas, pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 33 N., R. 90 W.,
sec. 32, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
sec. 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The above lands aggregate 480 acres.

As explained in the original notice (WYW 125203) published in 57 FR 5906 and 57 FR 5907 on February 18, 1992, the ANC proposes to acquire lands to be used for the construction and operation of a fully licensed disposal facility for materials similar in radiological and physical characteristics to uranium mill tailings. More specifically, these would be radioactive materials classified as 11e. (2) by-product material by the Atomic Energy Act of 1954, as amended, and naturally occurring radioactive materials (NORM). These materials would be permanently disposed of in separate disposal cells located adjacent to each other. The facility would be licensed by the Nuclear Regulatory Commission (NRC), Environmental Protection Agency (EPA), and the Wyoming Department of Environmental Quality (DEQ), depending upon the material being handled. The facility would be designed, constructed and operated in accordance with applicable federal, state, and local laws and regulations.

The proponent states that the facility would help meet the NRC's policy objective to limit the proliferation of small disposal sites associated with uranium and thorium mining operations. They indicate it would also provide a disposal option for NORM materials generated by mineral resource development such as phosphate mining,

oil and gas production, and rare earth extraction. The source of the material would be present and future uranium, thorium phosphogypsum and other rare earth mining, milling and production facilities; present and future oil and gas exploration, development and production facilities; and reclamation and remediation materials from operations conducted in the past where stabilization in place is not a viable option. These sources are located within the State of Wyoming and various locations within the continental United States.

If a sale is pursued by the proponent, and considered by BLM to be sufficiently in the public interest to consider, an environmental document covering the proposal would be prepared by appropriate agencies and made available for review and public comment at a later date, prior to a final decision. The public land would not be sold unless and until the proposed disposal facility was subjected to all required regulatory and environmental reviews and permitting required by the Wyoming DEQ, the NRC and the EPA. Such sale would be at fair market value. An additional nonrefundable application fee of \$50.00 would be required in accordance with 43 CFR subpart 2720 for conveyance of all unreserved mineral interests in the parcel.

Conveyance of the land would be subject to the following:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of oil and gas to the United States with the right to prospect, explore, and develop the same in accordance with the provisions of the federal mineral laws in force at the time of disposal.
3. BLM oil and gas lease serial number WYW-121606.
4. Any other valid existing rights including rights-of-way and unpatented mill site and lode mining claims encumbering the lands that are identified during the evaluation process.
5. Any mill site and lode claims held by ANC would be relinquished prior to conveyance of the surface estate and locatable mineral estate. Any unpatented lode mining claims located within the above described lands not held entirely by ANC will preclude sale of that applicable tract and the segregation effected by this notice shall be allowed to terminate.

The public lands involved are permitted for grazing by Phil Sheep Company, c/o John Philp, in the Gas Hills Allotment. There would not be a cancellation of grazing preference

because there is available forage in the allotment to accommodate the present grazing preference. Mr. Philp was provided a 2-year notice with the original *Federal Register* publication on February 18, 1992.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the *Federal Register*. The segregative effect will end 270 days from the date of the publication, upon issuance of a patent, or upon publication in the *Federal Register* of a termination of the segregation, whichever occurs first.

FOR FURTHER INFORMATION CONTACT:

Jack Kelly, Area Manager, Lander Resource Area, 125 Sunflower, P.O. Box 589, Lander, Wyoming 82520, (307) 332-7822.

SUPPLEMENTARY INFORMATION: For a period of forty five (45) days from the date of publication of this notice, interested parties may submit comments to the Area Manager, Bureau of Land Management, Lander Resource Area, P.O. Box 589, Lander, Wyoming 82520. Those comments submitted on the original publication are being retained on file by the BLM and those who commented were added to the mailing list for this notice. All comments will be retained and evaluated by the BLM Wyoming State Director who may sustain, vacate, or modify this proposed realty action.

At such time that the proponent has provided sufficient information and data on their proposal, the permitting agencies will conduct the necessary environmental assessment including further public review. The proposal may also require an amendment of the BLM's Lander Resource Management Plan.

Dated: October 22, 1992.

Jack Kelly,
Area Manager.

[FR Doc. 92-26141 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, December 4, 1992.

The Commission was reestablished pursuant to public Law 99-349,

Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is scheduled to begin at 1 p.m. at Park Headquarters. Prior to the business meeting, from noon to 1 p.m., the members of the Advisory Commission's Human Dimensions Subcommittee will be available to meet informally with interested members of the public to discuss its October 1992 final report on Human Dimensions and Off Road Vehicle Management at the CCNS. Copies of this report are available at the address listed below, or by calling 508-349-3785, ext. 202.

Agenda for the regular business meeting is as follows:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Superintendent's Report.
5. Hatches Harbor Project Discussion.
6. Human Dimensions Subcommittee Report.
7. New Business.
8. Agenda for Next Meeting.
9. Date of Next Meeting.
10. Communications/public comment.
11. Adjournment.

The business meetings are open to the public. It is expected that 15 persons will be able to attend each meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meetings or file written statements. Such request should be made to the park superintendent at least seven days prior to the meeting. Further information concerning these meetings may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: October 28, 1992.

James A. Revaleon,
Acting Regional Director.

[FR Doc. 92-27415 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-70-M

Natchez National Historical Park; Meeting

AGENCY: National Park Service, Interior.
ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Natchez National Historical Park

Advisory Commission will be held at 2 p.m. to 3 p.m., at the following location and date.

DATE: November 12, 1992.

LOCATION: Administrative Headquarters, Natchez National Historical Park, 504 South Canal Street, Natchez, Mississippi 39120.

FOR FURTHER INFORMATION CONTACT:

Mr. Stuart Johnson, Superintendent, Natchez National Historical Park, Post Office Box 1208, Natchez, Mississippi 39121, (601) 442-7047.

SUPPLEMENTARY INFORMATION: The purpose of the Natchez National Historical Park Advisory Commission is to advise the Secretary of the Interior on the development and management of the Natchez National Historical Park.

The members of the Advisory Commission are as follows:

Mr. William Batteast
Mr. John Callon
Ms. Joan Gandy
Ms. Alferdteen Harrison
Mr. Ronald Miller
Mr. Kenneth P'Pool

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 28, 1992.

Frank Catroppa,

Regional Director, Southeast Region.

[FR Doc. 92-27416 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-70-M

Sudbury, Assabet and Concord Rivers Study Committee Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, December 3, 1992.

The Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic

Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Lincoln Town Hall, Lincoln, Massachusetts. Lincoln Town Hall is located on the south side of Lincoln Rd., approximately 0.2 miles southwest of the 5-way intersection of Bedford, Trapelo, Weston, Lincoln, and Sandy Pond roads. From Rte. 2, take Bedford Road south to the 5-way intersection. Town Hall is straight ahead on the left side of Lincoln Rd. From Rte. 117, take Tower or Lincoln Rd. north. Town Hall is on the right, just past the Post Office on the other side of the road.

Agenda

- I. Welcome and introductions—Bill Sullivan
- II. Approval of minutes from 10/22 meeting
- III. Subcommittee Reports—Subcommittee Chairs
 - A. River Conservation Planning Subcommittee
 - B. Water Resources Subcommittee
 - C. Public Participation Subcommittee
- IV. Discussion—Issues of Local Concern
- V. Opportunity for public comment
- VI. Other Business
 - A. Next meeting dates and locations

Dated: October 28, 1992.

James A. Revaleon,

Acting Regional Director.

[FR Doc. 92-27414 Filed 11-10-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-338]

Certain Bulk Bags and Process for Making Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Pacific Rim Marketing Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act

of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 5, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: November 5, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-27370 Filed 11-20-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-556 (Final)]

Drams of One Megabit and Above From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-556 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea (Korea) of dynamic random access memories (DRAMs) of one megabit and above,¹ currently covered by statistical reporting numbers 8473.30.4000, 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTS) Annotated for statistical reporting purposes.²

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

¹ For purposes of Commerce's investigation, DRAMs include all 1 Meg and above dynamic random access memory semiconductors, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut dice, and cut dice. Processed wafers produced in Korea but packaged in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea are not included in the scope. The scope also includes memory modules, such as single in-line processing modules (SIPs) and single in-line memory modules (SIMMs), that contain 1 Meg or above dynamic random access memory semiconductors that are assembled together and function as memory. Modules that contain other parts that are needed to support the function of memory are considered to be covered memory modules. Only those modules containing additional items that alter the function of the module to something other than memory are not covered modules. The scope also includes video random access memories (VRAMs), as well as any future packaging and assembling of DRAMs (57 FR 49096).

² Prior to 1991, the subject product was covered by statistical reporting numbers 8473.30.4000, 8542.11.0035, and 8542.11.0002 of the HTS Annotated.

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of DRAMs of one megabit and above from Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1677b). The investigation was requested in a petition filed on April 22, 1992, by counsel on behalf of Micron Technology, Inc. Boise, ID.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 2, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 18, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 9, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short

statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 11, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 12, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 26, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 26, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 6, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27366 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-317 (Remand)]

Certain Internal Mixing Devices and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Kent R. Stevens, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Linda C. Odom, Esq. and Kent R. Stevens, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: November 3, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC.

[FR Doc. 92-27373 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-559 (Final)]

New Steel Rails From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice to the institution of final antidumping investigation No. 731-TA-559 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry to the United States is materially retarded, by reason of imports from the United Kingdom of new steel rails,¹ provided for in subheading 7302.10.10 and the heading 8548.00.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of new steel rails from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 1, 1992, by counsel on behalf of Steelton Rail Products & Pipe Division, Bethlehem Steel Corp., Steelton, PA, and CF&I Steel Corp., Pueblo, CO.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties in this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on December 10, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

¹ The merchandise subject to this investigation is new steel rails, except light rail and girder rail, of other than alloy steel, and over 30 kilograms per meter. New steel rails include standard and premium carbon steel T rail, crane rail, and contact rail (electrical rail).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 23, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 15, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 17, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is December 17, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 4, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 4, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published

pursuant to section 207.20 of the Commission's rules.

Issued: November 2, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-27371 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-548 and 551 (Final)]

Sulfur Dyes From China and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On September 21, 1992, the Commission instituted the subject investigations and established a schedule for their conduct (57 FR 46195, October 7, 1992). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from December 1, 1992 to December 31, 1992 for the United Kingdom and to February 1, 1993 for China. The Commission, therefore, is revising its schedule in the Investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 30, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on January 4, 1993; the prehearing staff report will be placed in the nonpublic record on December 18, 1992; the deadline for filing prehearing briefs is January 5, 1993; the hearing will be held at the U.S. International Trade Commission Building on January 13, 1993; the deadline for filing posthearing briefs is January 21, 1993; and the deadline for filing supplemental briefs providing comments regarding Commerce's final

determination with respect to China is February 5, 1993.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 6, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-27367 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-550 (Final)]

Sulfur Dyes From India

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-550 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of sulfur dyes,¹ provided for in subheadings 3204.15, 3204.19.30, and 3204.19.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part

¹ Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro, or amino groups, or by reaction of sulfur or alkaline sulfide with aromatic hydrocarbons. For purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 23, 1992.

FOR FURTHER INFORMATION CONTACT:

Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of sulfur dyes from India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 10, 1992, by Sandoz Chemicals Corporation, Charlotte, NC.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the

nonpublic record on December 18, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 13, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 30, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 5, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 5, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 21, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 21, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 6, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27368 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-333]

Certain Woodworking Accessories; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of James M. Gould, Esq.

The Secretary is requested to publish this Notice in the *Federal Register*

Dated: November 3, 1992.

Lynn I. Levine, Director

Office of Unfair Import Investigations, 500 E Street SW. Washington, DC 20436.

[FR Doc. 92-27372 Filed 11-10-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-No. 434x]

CSX Transportation, Inc.—Abandonment Exemption—Perry County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of approximately 2.84 miles of rail line in Perry County, KY, between milepost LF-267.00 near Leatherwood, KY, and milepost LF-269.84, the end of the track, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 12, 1992. Formal expressions of intent to file an offer ¹ of financial

¹ See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

assistance under 49 CFR 1152.27(c)(2) must be filed by November 22, 1992, petitions to stay must be filed by November 27, 1992, and petitions for reconsideration must be filed by December 7, 1992. Requests for public use conditions must be filed by December 2, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 434X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
- (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street-J-150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: November 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-27354 Filed 11-10-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decrees

Three proposed consent decrees in *United States v. Union Scrap Iron & Metal, et al.*, No. 4-89-40, were lodged with the United States District Court for the District of Minnesota on November 5, 1992. The consent decrees are cost recovery decrees under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), and resolve claims of the United States under section 107 of CERCLA, 42 U.S.C. 9607, against fifty-nine potentially responsible parties that owned or operated, or arranged for treatment or disposal of hazardous substances at, the Union Scrap Metal Site in Minneapolis, Minnesota. Under the terms of these consent decrees, the defendants will pay the United States \$1,422,200 of its unreimbursed response costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Union Scrap Iron & Metal, et al.*, D.J. Ref. No. 90-11-3-236A.

The proposed consent decrees may be examined at the Office of the United States Attorney for the District of Minnesota, 234 U.S. Courthouse, 110 South 4th St., Minneapolis 55401, Office of the United States Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the three consent decrees may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$33.50 (25 cents per page) for reproduction, costs, payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General,
Environment and Natural Resources Division.
[FR Doc. 92-27377 Filed 11-10-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Directory of Technical Assistance and Training Programs

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified organization or individual for the preparation of a directory of technical assistance and training programs for arts organizations and arts administration. As part of the work, the successful applicant will convene a one-day user group of five to seven individuals, as well as research and compile the directory. Funding is limited to \$20,000. Those interested in receiving the solicitation package should reference Program Solicitation PS 93-01 in their written request and include two (2) self-addressed labels. Vertical requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 93-01 is scheduled for release approximately November 2, 1992 with proposals due on December 2, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92-27339 Filed 11-10-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing on any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 17, 1992, through October 30, 1992. The last biweekly notice was published on October 28, 1992 (57 FR 48811).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR

50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the

Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a

supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone

call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: October 9, 1992

Description of amendments request: The proposed amendment would revise the Technical Specifications (TS) for both Units 1 and 2 regarding the diesel fuel oil requirements. The amendment request is divided into 3 specific areas.

Change No. 1 would revise TS 3.8.1.1 for both Units 1 and 2 to: increase the required volume of fuel maintained in each fuel oil storage tank (FOST), clarify the FOST requirements during periods of high tornado probability, and would remove the requirement to maintain an 8,000-gallon alternate source of fuel oil onsite whenever a FOST is inoperable. This change would also revise TS 3.8.1.2 to more clearly specify the action requirements for an inoperable FOST in Modes 5 and 6.

Change No. 2 would revise TSs 3.8.1.1.b.1 and 3.8.1.2.b.2 for both Units 1 and 2 to change the required minimum volume of fuel oil maintained in the day tanks from 375 to 275 gallons.

Change No. 3 would revise TS 4.7.11.1.2.b surveillance requirements for both Units 1 and 2 diesel-driven fire pump fuel oil chemistry requiring it to be

within the acceptable limits specified in ASTM (American Society for Testing and Materials) D975-81.

In addition, appropriate revisions are proposed for the Bases section of the TSs in order to reflect the above changes.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Change No. 1]

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of these changes will ensure the fuel oil storage and transfer system contains the required fuel oil volume for all normal and analyzed accident conditions, for all modes of operation. In the design basis accident analysis, the fuel oil storage and transfer system is assumed to contain a sufficient fuel oil volume to operate one Emergency Diesel Generator (EDG) powering one unit under accident conditions and one EDG powering the opposite unit under normal shutdown conditions for seven days. This volume has been determined to be 74,000 gallons. The Limiting Condition of Operation (LCO) has been revised so that this fuel oil volume will be roughly split between the two fuel oil storage tanks (FOSTs). To be consistent with the tornado protection criteria, the fuel oil storage and transfer system is also required to contain a minimum volume of bunkered fuel oil to operate two EDGs, one per unit, under normal shutdown conditions for seven days. This volume has been determined to be approximately 68,000 gallons. Because only No. 21 FOST is tornado protected (bunkered), this entire volume must be contained in that tank. Since this proposed technical specification will require No. 21 FOST to contain a minimum of 74,000 gallons, the tornado protection criterion is satisfied. The minimum volume required for design basis accidents (e.g. Loss-of-Coolant Accidents) is reserved below the standpipes in the FOSTs. The additional volume of fuel oil maintained in No. 21 FOST for safe shutdown following a tornado involving the loss of No. 11 FOST will be assured by administrative controls. These controls include periodic monitoring using local level indication. The continuous annunciation/alarm of FOST level in the Control Room will be modified following approval of this request. Until this modification is complete, the level in the bunkered FOST will be checked daily. In summary, these proposed requirements will ensure that the fuel oil storage and transfer system contains a sufficient volume of fuel for design basis accidents and tornadoes. The proposed increase in the allowed out-of-service time for No. 11 FOST from 72 hours to 7 days is compensated by the requirement to maintain the total site fuel oil requirement in No. 21 FOST. When No. 11 FOST is inoperable, the surveillance frequency for No. 21 FOST level would be increased.

Deletion of the present requirement to provide an 8,000 gallon fuel oil source whenever a FOST is out-of-service is not a significant change because its inclusion in the technical specifications has been determined to be inappropriate, based upon a review of the licensing basis. This review indicates that this requirement is only appropriate as a temporary compensatory measure for planned maintenance involving out-of-service times longer than those presently allowed by the technical specifications. In the future, extended maintenance activities would be handled under a separate license amendment request.

These changes would not increase the probability of any accidents previously analyzed because a failure in the fuel oil storage and transfer system is not an accident initiator. The purpose of the fuel oil storage and transfer system is to support the onsite emergency AC power systems in mitigating the consequences of design basis events involving the loss-of-offsite power. Because these proposed changes correct deficiencies and add new restrictions and compensatory measures to address the fuel oil capacity requirements for these events, there will be greater assurance that these events will be successfully mitigated. Therefore, these changes do not represent a significant increase in the probability or consequences of any accidents previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes to the fuel oil technical specification requirements do not change the function of the fuel oil storage and transfer system and do not represent a significant change in the configuration or operation of the plant. Rather, these changes primarily add new requirements and operation restrictions to reflect the results of licensing basis reviews conducted by the licensee. No new hardware is being added to the plant as part of the proposed changes, nor are any significantly different types of operations being introduced. The minimum fuel oil volumes that would be required by these proposed technical specifications are already being administratively maintained at the plant.

Therefore, the proposed amendment would not create the possibility of a new or different type of accident from those previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes will ensure that the fuel oil storage and transfer system contains enough fuel oil to operate the EDGs for seven days following design basis accidents or a tornado involving a loss-of-offsite power. Allowing the non-bunkered (No. 11) FOST to be removed from service for seven days does not significantly reduce the system design or operating safety margins since the total site fuel oil requirement will be maintained in the operable, bunkered FOST. The operable FOST can provide fuel oil to the EDGs through either of the two independent and redundant headers. Therefore, the proposed

changes do not involve a significant reduction in a margin of safety.

[Change No. 2]

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The volume of the day tank is not credited in the calculations for the volumes of the fuel oil storage tanks (FOSTs). During an accident, fuel is automatically made up to the day tank from the FOSTs via the fuel oil headers and fuel transfer pumps. The proposed reduction in the minimum volume of fuel oil maintained in the tank would reduce the amount of time that the day tanks would support operation of the emergency diesel generators (EDGs) before fuel is transferred from the FOSTs. However, this reduction is not significant because the fuel oil transfer function is automatic and one hour allows sufficient time for the operators to detect and correct most problems that may arise with the system. Failure of the fuel oil storage and transfer system is not an accident initiator. Therefore, reducing the required minimum volume of the fuel oil day tanks will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to reduce the minimum required volume for the fuel oil day tanks does not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change nor are there significantly different types of operations being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety for this technical specification is defined by the ability of the day tank to support short-term operation of the EDGs before fuel is automatically transferred from the FOSTs by the fuel transfer pumps. This period of short-term operation allows time for the plant operators to respond to most problems that may arise in the fuel transfer system. Although this change would result in this period being reduced from approximately two hours to one hour, there is still sufficient time for the operators to detect and correct most problems that may develop in the fuel oil transfer system. Therefore, the proposed change would not involve a significant reduction in the margin of safety.

[Change No. 3]

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The diesel-driven fire pump fuel oil chemistry surveillance requirement will be revised to require fuel oil to meet the applicable criteria of ASTM D975-81 to correct an inconsistency between the diesel-driven fire pump fuel oil chemistry surveillance requirements and those for the EDG fuel oil chemistry. This proposed change is minor in nature and will not result in a change to the diesel-driven fire pump fuel oil

chemistry. The change will ensure consistency in the specifications applied to the testing of the diesel fuel oil chemistry. Therefore, this proposed change would not result in a decrease in the reliability of the diesel-driven fire pump and would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to the diesel-driven fire pump fuel chemistry surveillance requirement does not represent a change in the configuration or operation of the plant. The proposed change reflects no actual change in the chemistry specifications for the diesel-driven fire pump. Therefore, the proposed change would not create the possibility of a new or different kind of accident from those previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change is minor in nature and does not constitute a substantive change to the Technical Specifications. This change will not result in a change to the diesel-driven fire pump operation. The fuel oil chemistry will not change nor will any actual testing requirements change as a result of this minor revision. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

-Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

**Commonwealth Edison Company,
Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2,
Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

Date of amendment request:
September 16, 1992

Description of amendment request:
The proposed amendment would revise Section 6 of the Technical Specifications to delete an out-of-date reference to Appendix A of 10 CFR 55 and to incorporate guidance provided in NUREG-1021, Operator Licensing Examiner Standards.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would delete the reference to the March 28, 1980 NRC letter to all licensees in Specifications 6.3.1 and 6.4.1. Additionally, a reference to Appendix A of 10 CFR Part 55 is being removed. This appendix was previously incorporated into the body of 10 CFR Part 55.

The purpose of the March 28, 1980 NRC letter to all licensees was to set forth revised criteria to be used by the NRC staff in evaluating reactor operator training and licensing under the regulations in effect at the time of the letter. These revised criteria were established based on the Commission review of the Three Mile Island Unit 2 accident which occurred on March 28, 1979. The letter stated that the Commission review in the area of operator training and qualification would continue and could be expected to result in additional criteria being established. The letter also stated that final requirements would be established through rulemaking proceedings.

The continued Commission review in the area of operator training and qualification resulted in revisions to 10 CFR 55 and the issuance of NUREG-1021, Operator Licensing Examiner Standards, which provides guidance regarding the implementation of 10 CFR 55 requirements. These requirements supersede those delineated in the March 28, 1980 NRC letter to all licensees.

Since the initial license examinations at both Byron and Braidwood Stations, operator training and qualification has been evaluated against the requirements of NUREG-1021.

Additionally, a reference to Appendix A of 10 CFR Part 55 is being removed. This appendix was previously incorporated into the body of 10 CFR Part 55. These changes are considered to be administrative in nature.

The Chapter 15 Analyses are unaffected by this request. The proposed change will have no effect on the sequence of events leading to the initiation of a transient. The chapter 15 Analyses assume a range of mechanical failures (i.e., pipe breaks, loss of heat sink, etc.) as the initiating event for the purpose of demonstrating the continued protection of the public. These failures are not assumed to be triggered by personnel actions. As such, the specific training requirements for the plant staff are not related to the probability of the occurrence of a previously analyzed accident.

The consequences of any previously analyzed accidents are not increased. The licensed Operators and Senior Operators at Byron and Braidwood Stations are trained in accordance with a Systems Approach to Training based program that has been accredited by the Institute for Nuclear Power Operations and evaluated against the requirements of NUREG-1021. Successful completion of this training provides a high level of confidence that operator actions assumed by the accident analyses will occur when required to mitigate the consequences of the accidents. Additionally, specific, short term actions assumed by the analyses are procedurally directed.

There is no possibility of an accident or malfunction of a type different from those described in the SAR occurring as a result of this proposed change. This change does not alter the installed configuration of any plant equipment. The plant equipment is not operated in a new or different manner, nor are there any equipment or system interactions introduced by these revisions. As such, no new or different failures are introduced, and hence, accidents of a new or different type will not be created by the change to the administrative requirements governing the qualification of licensed operators.

There will be no reduction in the margin of safety as a result of the proposed change. The proposed changes to the Technical Specifications are administrative in nature and have no effect on plant equipment or the setpoints at which the equipment would be actuated to mitigate the consequences of an accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 15, 1989, as supplemented September 16, 1992

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to clarify the intent of TSs 3.0 and 4.0 in order to help achieve consistent application of these specifications. This is in response to Generic Letter (GL) 87-09 which identified three problems in the Standard TS Sections 3.0 and 4.0. The bases will also be changed to reflect this clarification. In addition, the proposed amendment would remove the necessity for having many of the exceptions to TS Section 3.0.3 that are included in various TS sections. Where no longer required due to the clarification, these exceptions would be removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed amendments are administrative in nature and are intended to provide the plant operators with more guidance for application of the requirements of Technical Specification 3/4.0. These clarifications will help to ensure that the plant is operated within Technical Specification limitations, and help to prevent unnecessary plant shutdowns. This proposal does not affect the evaluation for any accident presented in Chapter 15 of the [Updated Final Safety Analysis Report] UFSAR.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This proposal does not involve any changes to the facility, or to the operation of the facility.

(3) Involve a significant reduction in the margin of safety because:

The guidance provided in this proposed amendment will help to ensure consistent interpretation of the Technical Specifications by the plant operators. This will in turn help to ensure that the plant is operated within Technical Specification limitations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 28, 1992

Description of amendment request: The amendment revises the Emergency Diesel Generator (EDG) Technical Specifications (TS) to upgrade the new fuel oil testing requirements to more up-to-date standards. This is necessary because the previous standard used has become outdated and has created difficulty in obtaining laboratory analysis of the new fuel oil.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes update the testing standards to more recent standards. The new standards are either more effective or equally effective in detecting unsatisfactory fuel oil. Therefore, the proposed change does not adversely impact the reliability of the EDGs. The EDGs will thus continue to function as designed and the probability or consequences of previously evaluated accidents is unaffected.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a change in the design of any plant system or component nor do they involve a change in the operation of any plant system or component. The proposed changes do not reduce the level of diesel generator reliability nor do they function as initiating events of any accident. Since the performance, function, and redundancy of the original design remain unchanged, this change creates no potential for a new or different kind of accident.

(3) Will the change involve a significant reduction in a margin of safety?

The changes do not impact any plant setpoints or the margins to any accident analysis limits. The proposed changes maintain the reliability of the EDCs and therefore maintain the current margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: L. B. Marsh

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 17, 1992

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 4.5.2.b to decrease the frequency of venting the emergency core cooling system (ECCS) piping from once per 31 days to once per

6 months. The revised TS would read as follows:

b. verifying the following:

1). At least once per six months that the ECCS piping is full of water by venting the ECCS pump casings and accessible discharge piping high points, and

2). At least once per 31 days that each valve (manual, power-operated, or automatic) in the flow path that is not locked, sealed, or otherwise secured in position, is in its correct position.

The frequency specified for verifying that valves are in their correct position, TS 4.5.2.b.2), above, would not be changed.

Basis for proposed no significant hazards consideration determination: The licensee states that monthly venting of the ECCS piping is labor intensive and causes unnecessary personnel exposure to radiation. Vogtle procedures require that the ECCS piping be filled and vented following maintenance on the associated systems. All high point vents in the Vogtle ECCS piping are lower than the water level of the aligned water source, which ensures that the piping remains full after filling and venting. Since 1987, the licensee has vented ECCS piping on a monthly basis in accordance with TS 4.5.2.b.1 and has found only insignificant quantities of air in the ECCS systems. The licensee, therefore, concludes that the proposed decrease in surveillance frequency is appropriate.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed revision to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because the designs of the systems assure that the ECCS piping remains full. Therefore, extending the surveillance frequency will not significantly affect the probability that the ECCS system will perform as designed.

2. The proposed revision to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because it does not involve any physical modification to the plant or any changes in the ECCS system's ability to perform as designed. The frequency of verifying that the ECCS piping is filled is unrelated to the types of accidents or events that could be expected to occur.

3. The proposed revision to the Technical Specifications does not involve a significant reduction in a margin of safety because the design of the system is such that the lines are maintained full by the elevation of the RWST or volume control tank (VCT), and the results of previous surveillances have indicated that air will not accumulate in these lines between surveillances.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Dombey, Troutman, Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2210.

NRC Project Director: David B. Matthews

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: October 16, 1992

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement 4.1.4.b. to extend the current quarterly pump surveillance test interval for Core Spray System 11 from January 10, 1993, until February 20, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS surveillance requirement 4.1.4.b requires that a quarterly surveillance test be performed on the NMP1 Core Spray System pumps. The proposed TS changes will extend the interval of Core Spray TS Surveillance Requirement 4.1.4.b. Specifically, the proposed TS change would allow Niagara Mohawk to extend the surveillance test interval from January 10, 1993, until February 20, 1993, the proposed refuel outage date.

Extending the surveillance interval does not affect the design or performance characteristics of the core spray pumps. Therefore, the core spray system maintains its ability to perform its design function. Also, based on previous pump surveillance tests, the Core Spray System has been determined to be a highly reliable system.

Therefore, system operability can reasonably be assumed for the duration of this amendment.

In summary, because the proposed change does not affect pump performance or significantly affect operability, the change will not result in an increase in the consequences of an accident previously evaluated.

Because this change does not affect the probability of accident precursors, this

proposed change does not affect the probability of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change will extend the test interval of System 11 Core Spray TS surveillance requirement 4.1.4.b. Specifically the proposed TS change would allow Niagara Mohawk to extend the surveillance test interval from January 10, 1993, until February 20, 1993, the proposed refuel outage date. This change does not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints, which could initiate a new or different kind of accident. Extending the surveillance interval does not affect the design or performance characteristics of the core spray pumps. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed TS change will extend the interval of Core Spray TS surveillance requirement 4.1.4.b. The proposed TS change will not reduce the equipment required by TS during a Limiting Condition of Operation or normal operation conditions or affect Limiting Safety System Settings for the Core Spray System. Extending the surveillance interval does not affect the performance of the Core Spray Systems nor its ability to perform its design function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 21, 1992 (Reference LAR 92 05)

Description of amendment requests:

The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to reflect: (1) installation of the Eagle 21 digital process protection system in place of the Westinghouse 7100 analog process protection system, and (2) elimination of the bypass manifolds for the reactor coolant system (RCS) resistance temperature detectors (RTDs). The specific TS changes proposed are as follows:

(1) A definition for a digital CHANNEL FUNCTIONAL TEST would be added and ANALOG CHANNEL OPERATIONAL TEST would become CHANNEL OPERATIONAL TEST and apply to both analog and digital channels.

(2) The allowable values of TS Tables 2.2-1 and 3.3-4 would be revised to reflect rack drift allowances associated with the removal of the Westinghouse 7100 analog process protection system and installation of the Eagle 21 digital process protection system.

(3) The Low-Low Steam Generator Water Level entries of TS Tables 2.2-1, 3.3-1, 3.3-2, 4.3-1, 3.3-3, 3.3-4, 3.3-5, and 4.3-2 would be revised to reflect incorporation of the Trip Time Delay (TTD) feature.

(4) The Overtemperature and Overpower delta T entries of TS Tables 2.2-1, 4.3-1, and 3.3-2 would be revised to reflect RTDBE.

(5) A new Steam Line Break (SLB) protection logic would be implemented that results in deletion of the Safety Injection (SI) and Steam Line Isolation on High Steam Line Flow coincident with P-12 Low-Low T_{avg} and Steam Line Flow coincident with Low Steam Line Pressure. SI on High Differential Pressure Between Steam Lines also would be deleted. SI and Steam Line Isolation on Low Steam Line Pressure and Steam Line Isolation on High Negative Steam Line Pressure Rate Coincident with P-11 Pressurizer Pressure would be added in place of the deleted functions (TS Tables 3.3-3, 3.3-4, 3.3-5, and 4.3-2).

(6) Testing and Maintenance in the bypass condition would be permitted for those functions for which the Eagle 21 system has an installed bypass testing capability.

(7) Reactor Trip and Engineered Safety Features Actuation System (ESFAS) allowable values would be implemented based on the Westinghouse Statistical Setpoint Methodology.

(8) The Steam Generator Water Level High-High trip setpoint for Turbine Trip and Feedwater Isolation, TS Table 3.3-4, would be revised to increase the setpoint from <67 to <75 percent of narrow range instrument span.

The Westinghouse Eagle 21 upgrade replaces the Westinghouse 7100 analog process protection equipment with digital equipment that will improve the reliability and availability of the Reactor Protection System (RPS). The Eagle 21 equipment is also designed to permit maintenance and testing of individual protection channels in the bypass mode at power. Other enhancements provided as part of the Eagle 21 upgrade include (1) a trip time delay feature designed

to reduce the potential for unnecessary Steam Generator Water Level Low-Low reactor trips below 50 percent power, (2) a new steam line break logic designed to reduce the potential for spurious safety injections at low power, and (3) an increased Steam Generator Water Level High-High Turbine Trip setpoint to reduce the likelihood of spurious trips due to normal operating transients.

The RTD bypass elimination modification involves removal of all RCS hot and cold leg bypass manifolds and associated piping and valves. Dual element RTDs will be installed in thermowells in the hot and cold legs to provide the necessary reactor coolant temperature information. This modification will result in reduced personnel radiation exposure, improved availability, and reduced maintenance.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS 2.2-1, 3/4.3.1, and 3/4.3.2 reflect upgrades and enhancements to the RPS to be made during the sixth refueling outage for each unit. The significant upgrade to the RPS consists of replacing the Westinghouse 7100 analog process protection equipment with the Eagle 21 digital system. The new system meets all applicable codes and standards for protection grade systems used in nuclear power plants. The use of the digital system avoids most of the drift problems associated with the analog process instrumentation. The Eagle 21 system also has improved test features that include automatic surveillance testing, self-calibration of analog circuits, and self-diagnosis of system troubles. The general revision of RPS setpoint allowable values is primarily the result of differences in rack drift and measurement and test equipment errors between the analog and digital systems. The new allowable values are calculated in Revision 1 of WCAP-11082, "Westinghouse Setpoint Methodology for Protection Systems," using accepted setpoint methodologies.

The RPS enhancements to be incorporated with the Eagle 21 upgrade are the Steam Generator Level TTD trip reduction feature, elimination of the RCS RTD bypass manifold, and incorporation of the new SLB protection logic. These enhancements are represented as specific revisions to RPS functional units in the proposed change package and are supported by reanalysis of the accidents in the corresponding FSAR Update sections.

Removal of the bypass manifolds and their replacement with RTDs mounted in thermowells installed into the reactor coolant loop piping is the only impact on the RCS boundary. All pressure boundary components will be procured and/or fabricated and installed in accordance with applicable ASME codes and standards. The remaining change is the change to [permit] channel

testing in bypass, [which has been generically approved by the NRC].

None of the above changes will increase the probability of an accident previously evaluated.

The proposed changes that incorporate new RPS setpoints, response times, or protection logic have been evaluated by the reanalysis of the corresponding FSAR Update Chapter 15 events. These reanalyses demonstrate that the overall conclusions drawn concerning the plant's ability to cope with design basis events remain unchanged. Therefore, these changes do not increase the consequences of any previously evaluated accident. The proposed changes reflecting new allowable values do not impose any new safety analysis limits or alter the plant's ability to detect and mitigate events. As such, these changes will not increase the consequences of a previously analyzed event. Because the ability of the RPS to detect faults and initiate protective action is not reduced, the FSAR Update analyses remain bounding and the consequences of accidents previously analyzed are not increased.

The change to increase the Steam Generator Water Level High-High Turbine Trip setpoint is based on a reanalysis of the safety analysis limit for turbine trip and feedwater isolation. This analysis demonstrates that the RPS effectiveness in mitigating any design basis event that assumes turbine trip or feedwater isolation from the Steam Generator High-High Water Level Trip is unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The RPS monitors selected plant parameters and initiates protective action as required. The proposed changes to the RPS TS reflect new setpoint allowable values, enhanced protection feature setpoints and logic to reduce unnecessary trips, and enhanced RPS testing. The proposed changes that incorporate new RPS setpoints, response times, or protection logic have been evaluated by the reanalysis of the corresponding FSAR Update Chapter 15 events. These reanalyses demonstrate that overall conclusions drawn concerning the ability of the plant to cope with design basis events remain unchanged. The proposed changes do not include any change to previously approved plant parameters, control schemes, or power level. The procurement and installation of the thermowell mounted RTDs is in accordance with all ASME code requirements; however, should any newly installed component fail, the resulting accident is within the envelope of existing accident analyses and does not represent a new or different kind of accident from any previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The RPS is fundamental to plant safety. The reactor trip system acts to limit the consequences of Condition II events (faults of moderate frequency) by, at most, a shutdown of the reactor and turbine. This imposes a limiting boundary region to plant operation that ensures that the reactor safety limits analyzed in FSAR Update Chapter 15 are not exceeded during Condition II events and that these events can be accommodated without developing into more severe events.

Similarly, the RPS acts to limit the consequences of Condition III events (infrequent faults) and mitigate Condition IV events (limiting faults). This is accomplished by sensing selected plant parameters and determining whether or not predetermined safety limits are being exceeded. If they are exceeded, the system sends actuation signals to those components whose aggregate function best serves to mitigate the severity of the accident.

As previously discussed, the proposed TS changes reflect RPS upgrades and enhancements that are supported by FSAR Update reanalyses, accepted setpoint methodology, and reliability studies reviewed by the NRC Staff. The supporting information demonstrates that the reliability and availability of the RPS are maintained, if not improved, and that the RPS will effectively perform its function of sensing plant parameters to initiate protective actions to limit/mitigate faults.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room
location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 15, 1992

Description of amendment request: The license amendment request proposes to revise requirements governing the testing frequencies and allowed outage times for analog instrumentation and digital logic systems of the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS). The changes

proposed in this license amendment request include revision of Trojan Technical Specifications (TTS) Section 3/4.3.1, "Reactor Trip System Instrumentation", and TTS Section 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and associated Bases to increase the surveillance test intervals (STIs) and allowed outage times (AOTs) for the analog channels of the ESFAS. The proposed changes also increase the AOTs for the digital actuation logic systems of the RTS and ESFAS. These proposed changes are based on Westinghouse Topical Report WCAP-10271, "Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation System," its supplements, and Nuclear Regulatory Commission (NRC) approvals issued in a Safety Evaluation Report (SER) dated February 22, 1989 and a Supplemental Safety Evaluation Report (SSER) dated April 30, 1990. The TTS are also revised to add testing requirements for ESFAS slave relays including actuated equipment through a commitment made to the NRC. Concurrent with these proposed changes, TTS provisions related to operation with three reactor coolant loops in operation are being deleted from the RTS and ESFAS instrumentation Technical Specifications since the three loop operation is not utilized at Trojan. This submittal was designated by the licensee as LCA 224.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below: Standard 1 - Does the proposed license amendment involve a

significant increase in the probability or consequences of an accident?

The determination that the results of the proposed changes to the surveillance frequencies and allowed out of service times for the RTS and ESFAS instrumentation are within acceptable criteria was established in the NRC's SERs prepared for WCAP-10271, Supplement 2 and WCAP-10271, Supplement 2, Revision 1. The Technical Specification changes proposed by this license amendment request conform to NRC guidance contained in these SERs. Implementation of the proposed changes is expected to result in only a small and acceptable increase in total ESFAS unavailability. This increase in probability, which is primarily due to less frequent surveillance, results in a small increase in the calculated core damage frequency and public health risk. The calculated increase in core damage frequency was judged to be acceptable since the increase was small and well within the range of uncertainty associated with the analysis.

The values presented in WCAP-10271, Supplement 2, Revision 1 for the increase in calculated core damage frequency were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses performed for the NRC staff. Based on the small increase in the calculated core damage frequency as compared with the range of uncertainty in the analysis, the NRC has agreed that the calculated increase is acceptable. This conclusion is documented in the NRC's SERs issued by letters dated February 22, 1989 and April 30, 1990. Applicability of these conclusions to Trojan has been verified through a Plant-specific review of the generic analysis in WCAP-10271, Supplement 2, Revision 1. The ESFAS functional units addressed by this license amendment request are included in the generic analysis. PGE [Portland General Electric] has also confirmed the values used in the Trojan setpoint methodology properly account for instrument drift due to extended STIs.

Removal of the requirement to perform the RTS analog channel testing on a staggered test basis has negligible impact on the RTS unavailability. Staggered testing was initially imposed to address the concern for common cause failures. However, procedures for the evaluation of potential common cause failures in the RTS and ESFAS along with process parameter signal diversity and normal operational test spacing will yield some of the benefits of staggered testing.

The addition of testing requirements for the ESFAS slave relays complies with guidance contained in Regulatory Guide 1.22, "Periodic Testing of Protection System Actuation Functions", and also with the wording contained in the original FSAR [Final Safety Analysis Report]. Furthermore, exceptions to quarterly testing are taken where such testing could adversely affect Plant safety or operability.

The removal of provisions for operation with three reactor coolant loops has no effect on Plant operation since three loop operation is not utilized at Trojan. Removal of this extraneous information improves the clarity of the affected Technical Specification tables. Similarly, minor editorial corrections in the numbering of Technical Specification provisions have been made for clarity.

Therefore, considering the above information, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes do not involve the physical alteration of any Plant system, nor will there be a change in the method by which any safety-related system performs its function. The increases in the surveillance testing frequencies and allowed out of service times for the RTS and ESFAS instrumentation affect only the probability of these systems functioning properly as described in response to Standard 1 above. The addition of requirements for testing of the ESFAS slave relays merely formalizes testing practices

which were part of the original licensing basis and are currently described in the updated FSAR. This change does not impact Plant safety or operability. As described in response to Standard 1, the deletion of extraneous information relative to three loop operation and minor editorial corrections have no effect on Plant operation. Therefore, the changes proposed in this license amendment request do not create a new or different type of accident from any previously evaluated.

Standard 3 - Does the proposed license amendment involve a significant reduction in a margin of safety?

The margin of safety is not reduced since the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined remains the same. The impact of reduced testing, other than as addressed in response to Standard 1, is to allow longer time intervals over which instrument uncertainties (e.g., drift) may act. Experience has shown the initial uncertainty assumptions are valid for reduced testing. PGE has evaluated historical calibration data for the affected ESFAS instrumentation and determined Trojan Plant setpoints are adequate to account for instrument drift due to the increased surveillance test intervals. In addition, ESFAS calibration data for channels with increased STIs will be monitored for a period of at least one year to assure that setpoints properly account for instrument drift.

Implementation of the proposed changes in surveillance test frequencies is expected to result in an overall improvement in Plant safety by:

1. Less frequent testing will result in fewer inadvertent reactor trips and actuations of the ESFAS components.

2. Improvements in the effectiveness of the operating staff monitoring and controlling Plant operation due to fewer distractions caused by instrumentation testing.

The addition of testing requirements related to the ESFAS slave relays to the Technical Specifications merely formalizes testing practices which conform to regulatory guidance and the licensing basis and has no impact on the margin of safety.

Therefore, there will be no reduction in a margin of safety as a result of this proposed license amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: Branford Price Millar Library,
Portland State University, 934 S.W.
Harrison Street, P.O. Box 1151, Portland,
Oregon 97207
Attorney for licensees:
Leonard A. Girard, Esq., Portland
General Electric Company, 121 S.W.
Salmon Street, Portland, Oregon 97204

NR Project Director: Theodore R. Quay

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 19, 1992

Description of amendment request:
The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (TS) amendment to change the frequency of Emergency Diesel Generator (EDG) capacity testing (specified in TS Section 4.6.A.2). This proposed change follows the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

- (1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed change does not involve a significant increase in the probability or consequences of any accident previously analyzed. The change proposes extending the surveillance interval for EDG capacity testing. The change does not involve any physical changes to the plant, nor does it alter the way the EDGs function. Other testing provides assurance of EDG operability. An evaluation of surveillance tests and operating occurrence reports for a five year period provides additional assurance that the longer surveillance intervals will not degrade system performance.

- (2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The change proposes extending the surveillance interval for EDG capacity testing. The change does not involve any physical changes to the plant, nor does it alter the way the EDGs function. Other testing provides assurance of EDG operability. An evaluation of surveillance tests and operating occurrence reports for a five year period provides additional assurance that the longer surveillance intervals will not degrade system performance.

- (3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed change does not involve a significant reduction in a margin of safety. The change proposes extending the surveillance interval for EDG capacity testing. The change does not involve any physical changes to the plant, nor does it involve any changes to established setpoints. Other testing provides assurance of EDG operability. An evaluation of surveillance tests and operating occurrence reports for a five year period provides additional assurance that the longer surveillance intervals will not degrade system performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: White Plains Public Library,
100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

TU Electric Company, Docket No. 50-445,
Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: August 31, 1992

Description of amendment request:
The Comanche Peak Steam Electric Station (CPSES) Unit 1 operating license includes the technical specifications for the operation of Unit 1. At the time Unit 2 receives an operating license, TU Electric will receive technical specifications that are applicable to both units, i.e., combined technical specifications. To implement the combined technical specifications on Unit 1, the Unit 1 license requires certain administrative and editorial changes. The proposed amendment would revise the Unit 1 technical specifications (TS) to delineate the required minimum shift crew composition for two unit operation of CPSES. The proposed change would: (1) replace Table 6.2.1, "Minimum Shift Crew Composition Single Unit Facility," with the appropriate table, "Minimum Shift Crew Composition Two Units With A Common Control Room;" (2) modify the descriptions of Shift Supervisor (SS), Senior Operator (SRO), and Operator (RO) to reflect the licensee's intention for the operators to have and maintain dual unit licenses; (3) add notes to the table to clarify the duties of the shift crew; and (4) make other administrative

changes to reflect the addition of Unit 2 to the technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve administrative changes in title descriptions and responsibilities which result from the operation of two units as opposed to one at CPSES, as well as the minimum shift crew for the operation of two units. As an adequate operational staff is provided via the minimum shift crew to respond to accident situations the changes do not impact nor affect the accident analysis assumptions. Therefore, these assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The changes to the Administrative Controls section do not impact the plant or plant operating procedures.

Therefore, this change does not create the possibility of a new or different kind of accident for CPSES Unit 1.

3. Do the proposed changes involve a significant reduction in the margin of safety, as defined by the bases of CPSES Unit 1 Technical Specifications?

The proposed changes do not impact nor affect any accidents or failure points and, therefore, do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: August 31, 1992

Description of amendment request: The Comanche Peak Steam Electric Station (CPSES) Unit 1 operating license includes the technical specifications for the operation of Unit 1. At the time Unit

2 receives an operating license, TU Electric will receive technical specifications that are applicable to both units, i.e., combined technical specifications. To implement the combined technical specifications on Unit 1, the Unit 1 license requires certain administrative and editorial changes.

The proposed amendment would revise DNBR related specifications necessary for the Unit 1 Technical Specifications to be applicable to both Units 1 and 2. The change would: (1) replace Figure 2.1-1 with Figures 2.1-1a and 2.1-1b, to provide reactor core safety limit curves for Units 1 and 2 respectively; (2) revise Sections 3/4.2.5 and the associated Bases section to add allowable Unit 2 DNBR related parameters; (3) revise Bases Sections 2.1.1, 2.2.1, 3/4.2.1, and 3/4.4.1, to make the Bases applicable to both Units 1 and 2; and (4) revise Section 6.9.1.6 to add references relating to Unit 2 approved core operating limits analytical methods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes do not impact any of the Unit 1 accident scenarios as the changes are for the inclusion of Unit 2. As the Unit 1 accident scenarios are not impacted there is no increase in the consequences of any previously evaluated accident.

The proposed change also involves administrative changes in reporting requirements for the Monthly Operating report. This change does not impact nor affect the accident analysis assumptions. Therefore, these assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

This change does not create the possibility of a new or different kind of accident for CPSES Unit 1. The change is adding Unit 2 information.

3. Do the proposed changes involve a significant reduction in the margin of safety as defined by the bases of the Technical Specifications?

The changes provides for the inclusion of the Unit 2 DNBR and has no impact on the margin of safety. Therefore, there is no significant reduction in the margin of safety as defined by the basis of the CPSES Unit 1 Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 22, 1992

Description of amendment request: The proposed amendment revises Technical Specification Section 6 to reflect changes to the Wolf Creek Nuclear Operating Corporation organization and position titles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve an administrative change to the WCNOG organization and to position titles and as such, have no effect on plant equipment or the technical qualification of plant personnel.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes are administrative in nature and do not involve any change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. These changes do not involve any changes in overall organizational commitments. An organizational change and position title changes alone do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of application for amendment: August 30, 1991, as superseded in its entirety by letter dated June 2, 1992.

Brief description of amendment request: The proposed amendments would change the technical specifications to reflect a change in the actuation logic which would accompany the replacement of the two original toxic gas monitoring channels with three state-of-the-art toxic gas monitoring channels. The actuation logic would be revised to provide a two-out-of-three (2/3) logic for a high toxic gas actuation signal and monitor failure actuation logic, as opposed to the current one-out-of-two (1/2) and two-out-of-two (2/2) logic respectively. In the June 2, 1992 letter, Houston Lighting and Power Company requested approval of an interim technical specification in

September 1992 followed by a final technical specification to be effective in February 1993. This would allow adequate time for hardware and procedural changes to support installation of the third toxic gas monitoring channel during the Unit 1 refueling outage (fall 1992) and Unit 2 refueling outage (spring 1993).

Date of individual notice in Federal Register: October 2, 1992 (57 FR 45643)
Expiration date of individual notice: November 2, 1992

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room,

the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 29, 1992, as supplemented August 28, 1992

Brief description of amendments: The amendments consist of changes to the Dresden and Quad Cities Technical Specifications that will: (1) revise the diesel generator operability requirements; (2) revise the 125 volt DC battery availability and test requirements; (3) eliminate some redundant emergency core cooling testing requirements for Quad Cities; (4) delete an electrical power availability requirement for Dresden; (5) modify the electrical feedback requirements for Quad Cities; and (6) incorporate various administrative changes primarily associated with the above changes.

Date of issuance: October 19, 1992

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 119, 115, 138, and 134, respectively

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 16, 1992 (57 FR 42770). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: March 9, 1992

Brief description of amendment: This amendment revises TS 9.0, "Inservice Inspection and Testing," by adding statement 9.3.e, which requires that the

Big Rock Point Inservice Inspection Program be performed in accordance with the Big Rock Point Intergranular Stress Corrosion Cracking (IGSCC) Program.

Date of issuance: October 19, 1992

Effective date: October 19, 1992

Amendment No.: 108

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 29, 1992 (57 FR 18172) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: October 29, 1990 as supplemented June 18, 1991 and April 13, 1992.

Brief description of amendments: This amendment changes Technical Specifications (TS) concerning, "Pressure-Temperature Limits," to limit the maximum heat-up rate to 60 F/hr and to provide revised heat-up and cooldown pressure-temperature (P-T) limit curves. In addition, the amendment changes the TS to reflect revisions to the pressure set point and enable temperature for the low-temperature overpressure protection system. The revisions are based on a reanalysis of reactor vessel sample material in accordance with Regulatory Guide 1.99, Revision 2. Through this licensing action the guidance of Generic Letter 88-11 has been followed for D. C. Cook, Unit No. 1.

Date of issuance: October 26, 1992

Effective date: October 26, 1992

Amendments Nos.: 167 Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 28, 1990 (55 FR 49452). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: June 30, 1992, as supplemented July 21, 1992, and October 19, 1992

Brief description of amendment: This amendment changes the Technical Specifications in support of the Unit 2, Cycle 6 reload, which will consist of fresh SNP 9x9(SQB-5) fuel assemblies and irradiated SNP 9x9(XN-3), (XN-2) and (XN-1) assemblies. Changes have been made to the following TS and Bases: a. B 2.1 Safety Limits b. 3/4.2.1 Average Planar Linear Heat Generation Rate c. 3/4.2.2 APRM Setpoints d. 3/4.2.3 Minimum Critical Power Ratio e. 3/4.2.4 Linear Heat Generation Rate f. 3/4.4.1 Recirculation System g. B 3/4.1 Reactivity Control System h. B 3/4.2 Power Distribution Limits i. B 3/4.4.1 Recirculation System j. 5.3.1 Fuel Assemblies

Date of issuance: October 28, 1992

Effective date: October 28, 1992

Amendment No.: 91

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 18, 1992 (57 FR 42776) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: August 7, 1992

Brief description of amendment: This amendment would make a change to the Susquehanna Steam Electric Station (SSES), Unit 2 Technical Specifications that changes the isolation signal for suppression pool cleanup line valves HV-25766 and HV-25768 from reactor vessel low water level 3 (+13") or high drywell pressure to reactor vessel low water level 2 (-38") or high drywell pressure.

Date of issuance: October 29, 1992

Effective date: October 29, 1992

Amendment No.: 92

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 2, 1992 (57 FR 40218) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 2, 1992

Brief description of amendment: The amendment modifies

Facility Operating License No. DPR-13 to a Possession Only License (POL) upon the permanent cessation of operations and the removal of all fuel from the core.

Date of issuance: April 2, 1992

Effective date: Upon certification to the NRC that all reactor fuel has been permanently offloaded from the reactor and stored in the spent fuel pool.

Amendment No.: 150

Facility Operating License No. DPR-13: The amendment modifies the operating license to a POL.

Date of initial notice in Federal Register: May 13, 1992 (57 FR 20518) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: April 1, 1992 (TS 311)

Brief description of amendments: These license amendments revise the Browns Ferry Nuclear Plant Technical Specifications by removing provisions that limit the combined interval of consecutive surveillances to less than 3.25 times the specified interval in accordance with the guidance of Generic Letter 89-14.

Date of issuance: October 19, 1992

Effective date: October 19, 1992

Amendment Nos.: 188 Unit 1; 203 Unit 2; 160 Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR 68: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: May 27, 1992 (57 FR 22268) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 1992. No significant hazards consideration comments received:

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Notice Of Issuance Of Amendment To Facility Operating License And Final Determination Of No Significant Hazards Consideration And Opportunity For Hearing (Exigent Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the

plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 14, 1992, the licensee may file a request for a hearing with respect to

issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: October 28, 1992

Brief description of amendment: The amendment suspends response time testing of two relays (3-CKT-1FWSA05 and 3-CKT-1FWSB05) in the auxiliary feedwater pump start circuit due to a main feedwater pump trip for the duration of Cycle 9.

Date of issuance: October 30, 1992

Effective date: October 30, 1992

Amendment No.: 168

Facility Operating License No. NPF-4: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. On October 22, 1992, the staff granted a Temporary Waiver of Compliance to be in effect until the amendment was issued. The Commission's related evaluation of the amendments, consultation with the State of New Jersey and final no significant hazards determination are contained in a safety evaluation dated October 30, 1992.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.
Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 4th day of November 1992.

For the Nuclear Regulatory Commission

Jack W. Roe, Director

Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[FR Doc. 92-27206 Filed 11-10-92; 8:45 am]

BILLING CODE 7590-01-F

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of

a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG-8013, "ALARA Levels for Effluents from Materials Facilities," and is intended for Division 8, "Occupational Health." This guide is being developed to provide criteria acceptable to the NRC staff that may be used by licensees in establishing a program for keeping doses to members of the public as low as is reasonably achievable (ALARA) to meet the requirements of 10 CFR 20.1101(b).

This particular guide is one of a series of guides that supports implementation of the revised 10 CFR part 20, "Standards for Protection Against Radiation," published in May 1991. However, this guide also serves the purpose of elaborating upon the existing NRC regulatory scheme for control of radioactive material and is expected to serve, in part, as documentation to support efforts by the Environmental Protection Agency to avoid dual regulation under the Clean Air Act and the Atomic Energy Act.

This guide is being issued in draft form to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide (including any implementation schedule). Comments should be accompanied by appropriate supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 20, 1993.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific

divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552 (a).

Dated at Rockville, Maryland, this 22nd day of October 1992.

For the Nuclear Regulatory Commission.
Bill M. Morris,
Director, Division of Regulatory Applications,
Office of Nuclear Regulatory Research.
[FR Doc. 92-27385 Filed 11-10-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-336]

**Northeast Nuclear Energy Co.;
Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would modify the Millstone 2 Technical Specifications in the area of TABLE 3.3-3, Engineered Safety Feature Actuation System Instrumentation (Page 3/4.3-13), the Table Notation, page 3/4.3-16 and the Action Statements, Action 4, page 3/4.3-17.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 14, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CAR 2.714 which is available at the Commission's Public document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioners property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06360-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it

publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 28, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 3d day of November 1992.

For the Nuclear Regulatory Commission.
Guy S. Vissing,

*Acting Director, Project Directorate I-4,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 92-27482 Filed 11-10-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-63A]

Request for Public Comment Concerning Possible Further Action Regarding the European Community's Oilseeds Subsidy Regime; Notice of Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comment concerning possible further action pursuant to sections 301(a) and 301(c) of the Trade Act of 1974, as amended (Trade Act); notice of public hearing concerning the possible further action.

SUMMARY: In a separate notice issued simultaneously with this notice, the United States Trade Representative (USTR or Trade Representative) has announced that subsidies on oilseeds granted by the European Community (EC) continue to deny benefits of the United States under the General Agreement on Tariffs and Trade (GATT). The Trade Representative, with the concurrence of the President, has determined pursuant to section 301(a) of the Trade Act to take action to enforce United States rights under the GATT. Pursuant to section 301(c), the USTR has decided, as an initial response, to increase duties to 200 percent ad valorem on certain goods the product of the EC.

The amount of trade affected by the action taken today is equivalent to 30 percent of the value of the burden or

restriction imposed upon United States commerce by the EC's oilseed subsidies. If the EC continues to deny these benefits to the United States, the Trade Representative will increase duties on additional products of the EC. The Trade Representative seeks public comment concerning a supplemental list of items upon which duties may be increased should the EC continue to refuse to conform to the GATT. The section 301 Committee will hold a public hearing concerning this proposed action on December 10, 1992.

DATES: Written comments from interested persons are due by 12 noon, on or before December 7, 1992; requests to testify at the public hearing are due by 12 noon, on or before November 20, 1992; written testimony is due by 12 noon, on or before December 7, 1992; the public hearing will be held on December 10, 1992; and post-hearing submissions are due by 12 noon, on or before December 14, 1992.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Director for European Community Affairs (202) 395-3074; Marilyn Moore, Senior Economist (202) 395-5006; Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources (202) 395-7305; for media inquiries, Christopher Allen, Director of Press Relations (202) 395-6120; for information concerning filing procedures, Dorothy Balaban, Special Assistant to the section 301 Committee (202) 395-3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition pursuant to section 302 of the Trade Act alleging, among other things, that the EC's acts, policies, and practices concerning oilseeds were denying rights of the United States under the GATT and were imposing a burden or restriction upon United States commerce. On January 5, 1988, the USTR initiated an investigation of these practices.

After extensive consultations failed to resolve the dispute, the United States, in accordance with section 303(a)(2) of the Trade Act, requested the GATT Council of Representatives (GATT Council) to establish a dispute settlement panel. The GATT panel found in 1989 that oilseed production subsidies impaired benefits accruing to the United States under the duty-free tariff bindings on oilseeds granted by the EC to the United States under the GATT. On January 25, 1990, the GATT Council adopted the

panel report by consensus, and the EC representative confirmed the EC's intention to comply with the panel's recommendations.

On May 24, 1991, the EC advised that it would implement the GATT panel's recommendations by October 31, 1991, and that the reforms would apply to all oilseeds harvested during calendar year 1992 and thereafter. The EC proposed a new subsidies regime that purported to comply with the GATT panel's recommendations. After reviewing the new regime, the United States concluded that the reforms failed to comply with the panel's findings. Accordingly, the United States proposed that the GATT panel be reconvened to consider whether the EC had implemented the panel's findings.

On March 31, 1992, the reconvened panel released its "follow-up" report, which confirmed that the EC is continuing to impair its duty-free tariff bindings on oilseeds. The reconvened panel recommended that the EC move expeditiously to bring its support system into conformity with the GATT or renegotiate its tariff concessions for oilseeds under article XXVIII of the GATT. At the GATT Council meeting on April 30, 1992, the EC indicated that it was not yet prepared to agree to either course of action.

On June 12, 1992, the USTR published a notice of proposed determination of action and request for public comment concerning the proposed action. 57 FR 25087. In view of the EC's failure to comply with the GATT panel reports, the USTR proposed, pursuant to sections 301(a) and 301(c), the impose increased duties affecting up to \$1 billion of EC imports into the United States, which is an amount equivalent to the burden or restriction imposed upon United States commerce by the EC's oilseeds subsidies. The USTR also published, as an annex to the notice, a list of products from which products could be selected for the imposition of increased duties.

On June 19, 1992, the EC announced that it would renegotiate its tariff bindings on oilseeds and oilmeals under Article XXVIII:4. Since that time, United States officials have conducted intensive negotiations with their EC counterparts in an effort to resolve this dispute without the need for action.

In response to the June 12th Federal Register notice, the USTR and the section 301 Committee received approximately 300 written comments concerning the appropriateness of including in the final list of products subject to increased duties the particular items included in the proposed list. On July 13-14, 1992, the section 301

Committee held a public hearing, at which over fifty witnesses testified, concerning the proposed action. Since the conclusion of the hearing, the USTR and the section 301 Committee have received over 150 additional written comments.

The United States has continued its efforts to resolve this dispute through bilateral negotiations. The EC has failed, however, to tender or accept any offer that would comply with its GATT obligations or compensate the United States for the continued denial of its benefits under the GATT.

By separate **Federal Register** notice, the USTR today decided, as an initial response, to increase duties to 200 percent ad valorem upon certain products of the EC. The products subject to this increase were among the products identified in the June 12, 1992 **Federal Register** notice. These products were selected based upon, among other things, comments submitted to the selection 301 Committee in response to the June 12 notice, as well as the testimony presented at the hearing held on July 13-14, 1992. The amount of trade affected is equivalent to 30 percent of the value of the burden or restriction imposed upon United States commerce by the EC's oilseed subsidies.

Proposed Determination of Action

If the EC continues to deny benefits to the United States, the Trade Representative will increase duties on additional imports of EC goods, up to an amount equivalent to the total burden or restriction imposed upon United States commerce by the EC's oilseed subsidies. Based upon the comments received and the testimony provided at the public hearing on July 13-14, 1992, the Trade Representative has decided to supplement the original list of products that could be subjected to increased duties. If the Trade Representative takes further action, the additional products to be subjected to increased duties may be selected from the proposed list set forth

in the **Federal Register** notice published on June 12, 1992, as well as the list set forth in the Annex to this notice.

Public Comment

USTR invites all interested persons to provide written comments concerning the proposed action. Specifically, interested persons may provide comments regarding (1) the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed by 12 noon, on or before December 7, 1992. Comments must be in English and provided in twenty copies to: Chairman, section 301 Committee, Office of the General Counsel, room 223, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301-63A) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Public Hearing

A public hearing concerning the proposed action will be held on December 10, 1992, commencing at 10 a.m. The hearing will be held at the International Trade Commission,

Courtroom A, room 100, 500 E Street, SE., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on November 20, 1992, to Chairman, Section 301 Committee, room 223, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. In their request, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the chairman will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a).

Additionally, persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on December 7, 1992, to the Chairman, section 301 Committee, at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

Testimony, both written and oral, shall be limited to the following subjects: (1) The appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumer of the products listed in the Annex. Remarks at the hearing will be limited to five minutes.

In order to allow each party an opportunity to respond to information provided at the hearing by other parties, USTR will consider rebuttal submissions filed by any party, in accordance with 15 CFR 2006.8(c) by noon on December 14, 1992.

Jeanne E. Davidson,
Chairman, Section 301 Committee.

BILLING CODE 3190-01-M

Annex

HTS Subheading	Article
[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
Other coloring matter; preparations as specified in note 3 to chapter 32 of the HTS, other than those of heading 3203, 3204 or 3205; inorganic products of a kind used as luminophores, whether or not chemically defined:	
3206.10.0010	Pigments and preparations based on titanium dioxide: Containing 80 percent or more by weight of TiO ₂
Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry: [Of a kind used in the food or drink industries]	
Other:	
3302.90.10	Containing no alcohol or not over 10 percent of alcohol by weight
3302.90.20	Containing over 10 percent of alcohol by weight
Perfumes and toilet waters:	
Not containing alcohol:	
3303.00.10	Floral or flower waters
3303.00.20	Other
3303.00.30	Containing alcohol
New pneumatic tires, of rubber:	
Of a kind used on motor cars (including station wagons and racing cars):	
4011.10.0010	Radial
Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or sheets:	
Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical process:	
4810.21.00	Light-weight coated paper

Annex (con.)

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HTS Subheading	Article
	<p>Glazed ceramic flags and paving, hearth or wall tiles; glazed ceramic mosaic cubes and the like, whether or not on a backing:</p> <p>Tiles, cubes and similar articles, whether or not rectangular, the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm:</p> <p>6908.10.10 Having not over 3229 tiles per square meter, most of which have faces bounded entirely by straight lines</p> <p>Other:</p> <p>6908.10.20 The largest surface area of which is less than 38.7 cm²</p> <p>6908.10.50 Other</p> <p>6908.90.00 Other</p> <p>Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):</p> <p>Drinking glasses, other than of glass-ceramics:</p> <p>Of lead crystal:</p> <p>7013.21.10 Valued not over \$1 each</p> <p>7013.21.20 Valued over \$1 but not over \$3 each</p> <p>7013.21.30 Valued over \$3 but not over \$5 each</p> <p>7013.21.50 Valued over \$5 each</p> <p>Other tubes and pipes (for example, welded, riveted or similarly closed), having internal and external circular cross sections, the external diameter of which exceeds 406.4 mm, of iron or steel:</p> <p>Line pipe of a kind used for oil or gas pipeline:</p> <p>Longitudinally submerged arc welded:</p> <p>Of iron or nonalloy steel:</p> <p>7305.11.1060 With an external diameter exceeding 609.6 mm</p>

Annex (con.)

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HTS Subheading	Article
	Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:
	[Pressure-reducing valves]
8481.20.00	Valves for oleohydraulic or pneumatic transmissions
	Check valves:
8481.30.10	Of copper
8481.30.20	Of iron or steel
8481.30.90	Other
	[Safety or relief valves]
	Other appliances:
	Hand operated:
8481.80.10	Of copper
8481.80.30	Of iron or steel
8481.80.50	Of other materials
8481.80.90	Other
	[Parts]
	Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37:
	Magnetic tapes:
8523.13.00	Of a width exceeding 6.5 mm
	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37:
	[Phonograph records; magnetic tapes]
	Other:
	[Master records or metal matrices therefrom for use in the production of sound records for export; recordings on wire; video discs]
	Other:
8524.90.4040	Laser disc sound recordings
	Other furniture and parts thereof:
	Wooden furniture of a kind used in the bedroom:
	[Bent-wood furniture]
	Other:
	[Designed for motor vehicle use]
9403.50.90	Other

[Docket No. 301-63A]

Determination of Action Concerning the European Community's Oilseeds Subsidy Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination pursuant to sections 301(a) and 301(c) of the Trade Act of 1974, as amended, 19 U.S.C. 2414 (Trade Act).

SUMMARY: Subsidies on oilseeds granted by the European Community (EC) continue to deny rights and benefits of the United States under the General Agreement on Tariffs and Trade (GATT). The United States Trade Representative (Trade Representative or USTR), subject to the direction of the President, has determined pursuant to section 301(a) of the Trade Act to take initial action to enforce United States rights under the GATT. Pursuant to section 301(c), the USTR has decided, as an initial response, to increase duties to 200 percent ad valorem upon goods the product of the EC identified in the Annex to this notice.

The amount of trade affected by this initial action is equivalent to 30 percent of the value of the burden or restriction imposed upon United States commerce by the EC's oilseed subsidies. If the EC continues to deny rights and benefits to the United States, the Trade Representative will increase duties upon additional EC products. The Trade Representative has issued today a separate **Federal Register** notice supplementing the original product list from which other goods could be selected for the imposition of increased duties. Should further action be taken, the Trade Representative may increase duties upon goods selected from either the original list or the supplemental list published today.

EFFECTIVE DATE: The increased duties will be assessed upon all products of the EC identified in the Annex to this notice that are entered, or withdrawn from warehouse for consumption, on or after December 5, 1992.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Director for European Community Affairs, (202) 395-3074; Marilyn Moore, Senior Economist, (202) 395-5006; Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395-7305; or, for media inquiries, Christopher Allen, Director of Press Relations, (202) 395-6120, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition pursuant to section 320 of the Trade Act alleging, among other things, that the EC's acts, policies, and practices concerning oilseeds were denying rights of the United States under the GATT and were imposing a burden or restriction upon United States commerce. On January 5, 1988, the USTR initiated an investigation of these practices.

After extensive consultations failed to resolve the dispute, the United States, in accordance with section 303(a)(2) of the Trade Act, requested the GATT Council of Representatives (GATT Council) to establish a dispute settlement panel. The GATT panel found in 1989 that EC oilseed production subsidies impaired benefits accruing to the United States under the duty-free tariff bindings on oilseeds granted by the EC to the United States under the GATT. On January 25, 1990, the GATT Council adopted the panel report by consensus, and the EC representative confirmed the EC's intention to comply with the panel's recommendations. The EC advised that the necessary measures would be effective by the 1991 crop year.

On January 31, 1990, the USTR determined, consistent with the GATT panel's conclusions, that the EC's production and processing subsidies on oilseeds deny rights of the United States under a trade agreement within the meaning of section 301(a)(1)(A) of the Trade Act, and that EC production subsidies deny benefits to the United States within the meaning of section 301(a)(1)(B)(i). Because the EC had agreed to take satisfactory measures within the meaning of section 301(a)(2)(B)(i) to comply with its GATT obligations, the USTR determined pursuant to section 301(a)(1)(B) that the appropriate action at that time was to conclude the investigation, monitor the EC's compliance pursuant to section 306(a), and take further action if the EC failed to implement the panel report satisfactorily by the 1991 crop year.

On May 24, 1991, the EC advised that it would implement the GATT panel's recommendations by October 31, 1991, and that the reforms would apply to all oilseeds harvested during calendar year 1992 and thereafter. The EC proposed a new subsidies regime that purported to comply with the GATT panel's recommendations.

After reviewing the new regime, the United States concluded that the reforms would not comply with the panel's finding. Accordingly, the United States proposed that the GATT panel be reconvened to consider whether the EC

had implemented the panel's findings. On March 31, 1992, the reconvened panel formally released its "follow-up" report, which confirmed that the EC is continuing to impair its duty-free tariff bindings on oilseeds. The reconvened panel recommended that the EC move expeditiously to remove the impairment by either modifying its oilseed support system or renegotiating its tariff concessions for oilseeds under article XXVIII of the GATT. At the GATT Council meeting on April 30, 1992, the EC indicated that it was not yet prepared to agree to either course of action.

On June 12, 1992, the USTR published a notice of proposed determination of action and request for public comment concerning the proposed action. 57 FR 25087. The notice stated that, pursuant to section 306(b) of the Trade Act, the USTR considered that the EC had failed to implement satisfactorily its commitment to comply with the original GATT panel report or to take any steps to implement the recommendations contained in the panel's "follow-up" report. Accordingly, the USTR proposed, pursuant to sections 301(a) and 301(c), to impose increased duties affecting up to \$1 billion of EC imports into the United States, which is an amount equivalent to the burden or restriction imposed upon United States commerce by the EC's oilseed subsidies. The USTR also published, as an annex to the notice, a list of products from which products could be selected for the imposition of increased duties.

On June 19, 1992, the EC requested and received GATT authorization to renegotiate its tariff bindings on oilseeds and oilmeals under article XXVIII: 4. Since that time, United States officials have conducted intensive negotiations with their EC counterparts in an effort to resolve this dispute without the need for action.

In response to the June 12th **Federal Register** notice, the USTR and the Section 301 Committee received approximately 300 written comments concerning the appropriateness of imposing increased duties upon the products listed in the annex to the notice, the levels at which U.S. customs duties should be set for particular items, and the degree to which increased duties might have an adverse affect upon U.S. consumers. On July 13-14, 1992, the section 301 Committee held a public hearing at which over 50 witnesses testified. Following the hearing, the USTR and the section 301 Committee have received over 150 additional comments.

The United States estimates that the global damage caused by the EC's oilseeds policies approximately \$2 billion annually, and that the damage to the United States industry is roughly \$1 billion annually. Throughout the negotiations, the EC has insisted that the damage caused by its oilseeds regime is less than \$400 million. To resolve this factual disagreement, the United States proposed in September 1992 that the amount of damages be submitted to binding arbitration. The EC refused.

The United States has continued its efforts to resolve this dispute through bilateral negotiations. The EC has failed, however, to tender or accept any offer that would comply with its GATT obligations or satisfactorily compensate the United States for the continued denial of its rights and benefits under the GATT.

Determination and Action

As noted above, the EC has failed to eliminate its oilseeds subsidies or to compensate the United States for the denial of its benefits under the GATT. In these circumstances, section 301(a)

requires the USTR to take action, subject to the specific direction, if any, of the President. The President has concurred with the action announced in this notice.

Section 301(c) authorizes the USTR to suspend or withdraw the benefits of trade agreement concessions or to impose duties or other import restrictions upon the products of a foreign country for such time as the USTR determines appropriate. The USTR has decided, as an initial response, to increase duties to 200 percent ad valorem upon the products of the EC described in the Annex to this notice. These products were selected based upon the numerous comments submitted to the Section 301 Committee in response to the June 12 notice, as well as the testimony presented at the public hearing held on July 13-14, 1992.

Accordingly, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after December 5, 1992, the Harmonized Tariff Schedule of the United States is hereby modified by inserting in numerical sequence the new subheadings and

superior text thereto contained in the Annex to this notice.

The amount of trade affected by this initial action is equivalent to 30 percent of the value of the burden or restriction imposed upon United States commerce by the EC's oilseed subsidies. The Trade Representative has limited this initial action, notwithstanding the much larger damages incurred, in order to encourage the EC to bring its oilseeds policies into compliance with the GATT. If the EC continues to deny rights and benefits to the United States, however, the Trade Representative will increase duties upon additional imports of EC goods. The Trade Representative has issued today a separate Federal Register notice supplementing the original list of products from which products could be selected for the imposition of increased duties. Should further action be taken, the Trade Representative may increase duties upon goods selected from either the original list or the supplemental list published today.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

BILLING CODE 3190-01-M

Annex

Effective with respect to articles the product of the European Community entered, or withdrawn from warehouse for consumption, on or after December 5, 1992.

1. The HTS is modified by adding new note 7 to subchapter III of chapter 99 to the HTS as follows:

"7. For the purposes of subheading 9903.24.03, the expression wine means:

(a) any of the wines listed below--

Alba	Ehrenfeiser	Moscato di Pantelleria
Albana di Romagna	Entre Deux Mers	Moscato d'Asti
Albana	Erbaluce di Caluso	Moscato di Siracusa
Alcamo	Erbaluce	Mosel
Alello	Etna Bianco	Mosselle
Aligote	Etoile	Miller Thurgau
Alvarinho	Faberrebe	Müller-Thurgau
Anjou Coteaux de la Loire	Feher	Muscadet Coteau de La Loire
Ansonica	Feherbor	Muscadet
Ardenghesca	Forster Jesuitengarten	Muscadet de Sevre et Maine
Aveleda	Franciacorta Pinot	Muscat d'Alsace
Barsac	Frano di Avellino	Muscat of Samos
Batard - Montrachet	Frascati	Muskateller
Beaujolais Blanc	Frascati Secco	Nuragus
Bergerac Cote de Sausignac	Fume de Pouilly	Nuragus di Cagliari
Bernkasteler Doctor (Doktor)	Gaillac Premieres Cotes	Ockfener Bockstein
Bianchello del Metauro	Gaillac	Optima
Bianco di Custoza	Galestro	Ortega
Bianco	Gambellara	Orvieto
Bianco Vergine Valdichiana	Gelber Muskateller	Orvieto Secco
Bienvue-Batard-Montrachet	Genevriera	Pacherenc du Vic Bilh
Bijelo	Gewurztraminer	Pacherenc
Blanc Fume de Pouilly	Grascher Himmelreich	Pallini
Blanc	Grand Roussillon	Pampanuto
Blanco	Grango	Farrina
Blanquette de Limoux	Graves Superieures	Perriere
Bombino Bianco	Greco di Tufo	Petit Chablis
Bonnezeaux	Greco di Gerace	Picpoul de Pinet
Bordeaux Blanc	Grüner Silvaner	Pinot Bianco
Bourgogne Aligote	Gutedel	Pinot Chardonnay
Brucellas	Haut Montravel	Pinot Blanc
Cadillac	Huxelrebe	Pinot Dell Ol Trepo
Caluso	Jasieres	Pinot Grigio
Carricante	Jaune	Pinot Gris
Casa da Seara	Jurancon	Platino
Casal Mendes	Kanzler	Pouilly sur Loire
Castel del Monte Bianco	Kerner	Pouilly Vinzelles
Cérons	L'Etoile	Pouilly Fume
Chablis	Lacrime d'Arno	Pouilly-Fuisse
Chardonnay	Lacryma Christi	Pouilly-Loche
Charlemagne	Lefkos	Prosecco de Conegliano
Chassagne-Montrachet	Liebfrauenmilch	Prosecco
Chasselas	Liebfrauenmilch	Prosecco di Congliano
Chateau Grillet	Lindos	Prosecco di Valdobbiadene
Chevalier-Montrachet	Locorotondo	Puligny Montrachet
Cinque Terre	Loupiac	Quarts de Chaume
Clairette de Belegarde	Lugana	Quincy
Clairette de Die	Luganan	Rasteau
Clairette du Languedoc	Macon Blanc	Recioto di Soave
Condrieu	Mamertino	Ribolla
Corton Languettes	Marino	Riesling del Trentino
Coronata	Martina Franca	Riesling
Cortese	Martina	Rivesaltes
Cortese di Gavi	Meursault	Rosette
Corton Pougets	Mittelmosel	Rousette
Corton Charlemagne	Monbazillac	Ruchottes
Corton	Mono-Muskat	Rülander
Corvo Bianco	Montagny	Saint Foy Bordeaux
Coteaux du Layon	Montecarlo Bianco	Saint Veran
Coteaux de l'Aubance Chaume	Montefiascone	Saint Peray
Coteaux d l'Aubane	Monterosso Val D'Arda	Sainte Croix du Mont
Coteaux de la Loire	Montescudio	Sancerre
Cotes de Blaye	Montlouis	Sansevero
Cotes de Bordeaux Saint-Macaire	Montrachet	Santa Helena
Cotes de Montravel	Montravel	Santa Laura
Crepy	Morio-Muskat	Saussenac
Croix Batard Montrachet	Moscato di Noto	Sauternes

Annex (con.)

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Sauvignon Dei Colli Orientali
del Friuli
Sauvignon dell'Isonzo
Sauvignon Colli Bolognesi di
Monte San Pietro
Sauvignon Colli Berci
Savennieres
Scharz Hosberger
Scheurebe
Schwarze Katz
Seyssel
Siegerrebe
Silvaner
Soave
Sylvaner
Terlano
Tocai

Tokay d'Alsace
Torbato
Tourane-Azay-le-Rideau
Trabense
Traminer Aromatico del
Trentino
Traminer
Trebbiano di Romagna
Trebbiano
Trebbiano Val Trebbia
Trebbiano di Abruzzo
Velletri
Verdicchio di Jesi
Verdicchio
Verdicchio di Matelica
Verdicchio dei Castelli di
Jesi

Verduzzo
Verduzzo del Piave
Vermantino Ligure
Vernaccia di San Gimignano
Vin Jaune
Vin Blanc
Vin Santo
Vin de Paille
Vouvray
Weiß Riesling
Weißer Burgunder
Weissburgunder or Weißburgunder
Weisser Gutedel or Weißer
Gutedel
Weisswein or Weißwein
Zagarolo
Zeller Schwarze Katz; or

(b) any wine containing less than 20 ppm of anthocyanin compounds."

2. The HTS is modified by adding in numerical sequence the following subheadings to subchapter III of chapter 99 to the HTS. Bracketed matter is included to assist in the understanding of modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

[Articles the product of the European Community
(Belgium, Denmark, France, the Federal Republic of
Germany, Greece, Ireland, Italy, Luxembourg, the
Netherlands, Portugal, Spain, and the United
Kingdom:)]

"9903.24.01	Wheat gluten, whether or not dried (provided for in heading 1109.00).....	200%	No change	No change
9903.24.02	Rapeseed, colza or mustard oil, and fractions thereof, whether or not refined, but not chemically modified (provided for in subheadings 1514.10 or 1514.90).....	200%	No change	No change
9903.24.03	Wine, as defined in U.S. note 7 of this subchapter, not effervescent, of an alcoholic strength by volume not over 14 percent vol., in containers each holding not over 4 liters (provided for in subheadings 2204.21.50 or 2204.29.20).....	200%	No change	No change"

[FR Doc. 92-27305 Filed 11-10-92; 8:45 am]

BILLING CODE 3190-01-C

POSTAL RATE COMMISSION

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; H. Edward Quick, Jr.

[Docket No. C93-1]

Filing of Complaint and Order Setting Time for Responses and Appointing Officer of the Commission; Complaint of Citizens for a Sound Economy Legal Alliance

November 5, 1992.

Notice is given that the Citizens for a Sound Economy Legal Alliance (CSE Legal Alliance) has submitted a letter, dated September 29, 1992, in which it stated it wished to file a complaint under the provisions of 39 USC 3662. The letter requests a proceeding "to strengthen, revise, and reform current rules and accounting procedures regarding the use of second-class mail subsidies." CSE Legal Alliance asserts that second-class mailers receive preferential prices and service. It argues that second-class mailers receive the benefit of both Congressional appropriations and "subsidies built into other mail rates." Newspapers are identified as a major beneficiary of these subsidies.

The gravamen of CSE Legal Alliance's complaint is its assertion that newspapers are engaged in a lobbying campaign to have enacted a law which would reverse the court decision permitting the regional Bell operating companies to enter the "electronic publishing" market. CSE Legal Alliance argues that newspapers may be using public funds in lobbying efforts. It also asserts that the goal of the lobbying in question is contrary to the purpose of second-class mail, namely the promotion of the dissemination of a wide variety of viewpoints.

CSE Legal Alliance requests the consideration of four changes. The first two are accounting and disclosure requirements for subsidies received and lobbying activities. The third request is a requirement that second-class mailers certify that subsidies and any profits resulting from them have not been used for any lobbying activities that a federal agency is prohibited from undertaking. The fourth request is adoption of procedures to "ensure that postal rates reflect only those expenditures that further valid diversity goals."

The relief requested by CSE Legal Alliance raises a number of issues, including the permissible amount and type of regulation of the content of publications using the mails. Also raised is the question of whether it would be

appropriate to put such detailed requirements in the Domestic Mail Classification Schedule, as well as the administrative burden of enforcing them. Additionally, the complaint appears to assume that all second-class mailers are receiving public funds in the form of a subsidy, which has not been the view of the Commission since the end of phasing. Under section 3662, the Commission has the discretion to determine whether to hold hearings on a filed complaint. The Commission is interested in parties' views on whether a complaint proceeding is an appropriate forum for addressing the issues raised by CSE Legal Alliance.

We are setting December 7, 1992, as the date for the Postal Service to respond to this complaint. As the complaint addresses the practices of users of the mails, interested parties are also invited to submit comments by that date. Interested persons wishing to participate in this complaint proceeding may file a notice of intervention. We are appointing Stephen A. Gold, Director of the Office of Consumer Advocate, to represent the interest of the general public in this proceeding.

It is ordered:

1. Notice is given that the Citizens for a Sound Economy Legal Alliance has filed a complaint regarding regulations governing second-class mail.

2. Responses to the complaint are due December 7, 1992.

3. Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interest of the general public in this proceeding.

4. The Secretary of the Commission will have this Notice and Order published in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 92-27335 Filed 11-10-92; 8:45 am]

BILLING CODE 7710-FW-M

RAILROAD RETIREMENT BOARD

1993 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The monthly compensation base under section 1(i) of the Act is \$810 for months in calendar year 1993;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly

compensation base" is \$2,025.00 for base year (calendar year) 1993;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to \$775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to \$600" is \$1,046 for months in calendar year 1993;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is \$2,025.00 for base year (calendar year) 1993;

5. The amount described in section 4(a-2)(i)(A) of the Act as "2.5 times the monthly compensation base" is \$2,205.00 with respect to disqualifications ending in calendar year 1993;

6. The maximum daily benefit rate under section 2(a)(3) of the Act is \$33 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1993.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1993. The determination made in notice (6) is effective for registration periods beginning after June 30, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT:

Timothy H. Hogueisson, Bureau of Research and Employment Accounts, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611-2092, telephone (312) 751-4789.

SUPPLEMENTARY INFORMATION: The RRB is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Public Law 100-647, to publish by December 11, 1992, the computation of the calendar year 1993 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a-2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 1993, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1993.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1993 shall be equal to the greater of (a) \$600 and (b) \$600 [1 + {(A

— 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1993 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5.

The calendar year 1993 tier 1 tax base is \$57,600. Subtracting \$37,800 from \$57,600 produces \$19,800. Dividing \$19,800 by \$56,700 yields a ratio of 0.34920635. Adding one gives 1.34920635. Multiplying \$600 by the amount 1.34920635 produces the amount of \$809.52, which must then be rounded to \$810. Accordingly, the monthly compensation base is determined to be \$810 for months in calendar year 1993.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a-2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1993 monthly compensation base of \$810 produces \$2,025.00. Accordingly, the amount determined under section 1(k) is \$2,025.00 for calendar year 1993.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to \$775 as the monthly compensation base for that year bears to \$600 shall be taken into account.

The calendar year 1993 monthly compensation base is \$810. The ratio of \$810 to \$600 is 1.35000000. Multiplying 1.35000000 by \$775 produces \$1,046. Accordingly, the amount determined under section 2(c) is \$1,046 for months in calendar year 1993.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year.

Multiplying 2.5 by the calendar year 1993 monthly compensation base of \$810 produces \$2,025.00. Accordingly, the amount determined under section 3 is \$2,025.00 for calendar year 1993.

Under section 4(a-2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1993 monthly compensation base of \$810 produces \$2,025.00. Accordingly, the amount determined under section 4(a-2)(i)(A) is \$2,025.00 for calendar year 1993.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1993, shall be equal to the greater of (a) \$30 and (b) \$25 $[1 + \{(A - 600)/900\}]$, where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of \$100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of \$1, it shall be rounded to the nearest multiple of \$1.

The calendar year 1993 tier 1 tax base is \$57,600. Dividing \$57,600 by 60 yields \$960. This amount is rounded down to \$900, the nearest multiple of \$100. Subtracting \$600 from \$900 produces \$300. The ratio of \$300 to \$900 is 0.33333333. Adding 1 produces 1.33333333. Multiplying \$25 by 1.33333333 produces \$33.33, which must then be rounded to \$33. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 1993, is determined to be \$33.

Dated: November 4, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-27355 Filed 11-10-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31403; File No. SR-CSE-92-05]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Approval of Membership Applications.

November 4, 1992.

I. Introduction

On July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to amend Article II, section 6 of its Code of Regulations ("By-laws") to amend the CSE's procedures for the approval of Exchange membership applications. The proposed rule change would specify that approval by the CSE's Membership Committee of new members of the Exchange is final. The proposal, as a result, would eliminate the current requirement of further review of membership applications by the CSE's Board of Trustees ("Board").

The proposed rule change was noticed in Securities Exchange Act Release No. 30994 (August 3, 1992), 57 FR 35616 (August 10, 1992). No comments were received on the proposal.

II. Background

Article II, section 6(c) of the CSE's By-laws sets forth the procedures for the approval of membership applications on the Exchange. The current procedures require that all membership applications be forwarded to the Exchange's Membership Committee for review. The procedures specify that if a majority of the Exchange's Membership Committee is satisfied that the applicant is qualified for membership pursuant to the requirements of the Exchange,³ the Membership Committee shall notify the Secretary of the Exchange of the determination, and the Secretary of the Exchange shall notify the applicant and the Board of the Membership Committee's determination. Within thirty days of notification, however, the Board may reverse the Membership Committee's determination that the applicant is qualified for membership. If

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ See Article II, Sections 3, 4, 5, 5.2, 6 and 7 of the CSE's By-laws.

the Board does not act within the thirty day period, the applicant is admitted to membership of the CSE.

III. Description of the Proposal

The CSE proposes to amend Article II, section 6(c) of its By-laws to eliminate Board review of membership applications. As amended, the CSE's membership application procedures would specify that if a majority of the Membership Committee is satisfied that the applicant is qualified for Exchange membership under the rules of the Exchange, the applicant shall be admitted to membership.

The CSE states that the purpose of the proposed rule change is to expedite new member access to Exchange facilities. According to the CSE, its Board rarely, if ever, has reversed a determination of its Membership Committee to approve a membership application. The CSE argues that the Board's current thirty day review period of such applications has impeded the Exchange's business without providing any countervailing benefits.

The CSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

IV. Discussion

The Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act.⁴ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposal should further the objectives of section 6(b)(5) because the revised procedures are designed to expedite new member access to the Exchange following a review of the applicant's qualifications by the CSE's Membership Committee. The proposal merely simplifies the CSE's membership approval process by eliminating the current thirty day period between Membership Committee approval and

Board review of a membership application. In this regard, the Commission notes that the CSE Board has not routinely exercised its authority to override the determinations of the Membership Committee. The Commission believes that it is reasonable for the Exchange to determine that approval of a membership applicant by its Membership Committee, without providing for a period of Board review of the applicant, provides a more efficient procedure for the admission of members to the Exchange.

The proposed rule change, however, does not affect the Board's ability to review a decision of the Membership Committee to deny membership to an applicant.⁵ This provision is designed to ensure that CSE membership rules are consistent with sections 6(b)(7) and 6(d)(2) of the Act which require that the rules of an exchange provide a fair procedure for the denial of membership status to any person seeking to become a member of an exchange.

Moreover, the Commission notes that the proposed rule change simply amends the process for the approval of Exchange membership applications and does not alter the requirements for Exchange membership. The CSE's By-laws will continue to require that its Membership Committee conduct a thorough review of an applicant's qualification for membership,⁶ in a manner consistent with the requirements of section 6(b)(2) and 6(c) of the Act.

V. Conclusion

It therefore is ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-27359 Filed 11-10-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Air Casino, Inc.

AGENCY: Department of Transportation.

⁴ See Article II, section 6(d) of the CSE's By-laws.

⁵ See generally Article II of the CSE's By-laws.

⁷ 15 U.S.C. 78s(b)(2) (1988).

⁸ 17 CFR 200.30-3(a) (12) (1991).

ACTION: Notice of commuter air carrier fitness determination—order 92-11-16 order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Air Casino, Inc., is fit, willing, and able to provide commuter service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 20, 1992.

FOR FURTHER INFORMATION CONTACT:

Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: November 5, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-27382 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-62-M

Commission to Promote Investment in America's Infrastructure

AGENCY: Office of the Secretary.

ACTION: Meeting notice.

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., appendix I), notice is hereby given of the agenda for the Commission to Promote Investment in America's Infrastructure which was established pursuant to section 1081 of Public Law 102-240, the Intermodal Surface Transportation Efficiency Act of 1991.

Public hearings were held on September 24 and 25, 1992, in the hearing room of the Committee on Environment & Public Works, United States Senate. Similar hearings were held on October 8 and 9, 1992. Roundtable discussions were held on October 29 at the Department of Transportation and on October 30 at the Department of Labor.

Further meetings are scheduled for Thursday, November 19, at 10 a.m. and Friday, November 20 at 10 a.m. in the Senate Environment and Public Works Committee hearing room, SD 406.

FOR FURTHER INFORMATION CONTACT: Ms. Ann C. Agnew, Deputy Assistant

⁴ 15 U.S.C. 78f (1988).

Secretary for Policy and International Affairs, U.S. Department of Transportation, 400 7th Street, SW., room 10228, Washington, DC 20590, 202-366-4450.

Dated November 5, 1992.

Ann Agnew,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-27381 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. app. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Rules Standards & Instructions Application (RS&I-AP)—No. 1085

Applicant: Union Pacific Railroad Company, and Missouri Pacific Railroad Company, Mr. A. L. Shoener, Executive Vice President—Operations, 1416 Dodge Street, room 1206, Omaha, Nebraska 68179.

The Union Pacific Railroad Company and Missouri Pacific Railroad Company jointly seek relief from the requirements of § 236.566 (49 CFR 236.566) of the Rules Standard and Instructions to the extent that they be allowed to operate non-equipped or non-responsive locomotives, operating as switch engines and operating in local train service, in cab signal territory between the following milepost locations:

1. North Platte, Nebraska, between milepost 281.0 and 292.0, on all main tracks;
2. The Dalles, Oregon, between milepost 84.6 and 81.0, on two main tracks;
3. Graham Line, Oregon, between milepost 0.6 and 15.6, on the single main track;
4. Columbus, Nebraska, between milepost 79.0 and 86.5, on the two main tracks;
5. Grand Island, Nebraska, between milepost 144.0 and 150.0, on the two main tracks; and
6. East Menoken, Kansas, between milepost 72.9 and 75.0, on the two main tracks.

Applicant's justification for relief: To improve the utilization of its power supply and eliminate situations in which

the lack of an equipped locomotive interferes with customer service.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on November 3, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-27380 Filed 11-10-92; 8:45am]

BILLING CODE 4910-06-M

Federal Transit Administration

Environmental Impact Statement on Southwest Corridor Transit Improvements in the Denver, Colorado Metropolitan Area

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Regional Transportation District (RTD), in cooperation with the Colorado Department of Transportation (CDOT), hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in the Southwest Corridor in the Denver, Colorado metropolitan area. The EIS is being prepared in conformance with 40 CFR part 1500, Council on Environmental Quality, regulations for implementing the procedural requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR part 622, Federal Transit Administration and Federal Highway Administration, Environmental impact and related procedures. The EIS will evaluate the No Build, Transportation System Management

(TSM), rapid transit, and busway alternatives in the Southwest Corridor and determine the costs and potential impacts associated with each. RTD will be the local lead agency for the preparation of the EIS. The EIS also will satisfy the requirements of the 1990 Clean Air Act Amendments. Scoping will be accomplished through correspondence with affected parties, organizations, federal, state and local agencies and through several public hearings.

DATES: Comment Due Date: Written comments on the scope of the alternatives and impacts to be considered should be sent to RTD by December 20, 1992.

Scoping Meetings: Public scoping meetings will be held on Thursday, December 10, 1992 at 7 p.m., in the City Council Chambers of the City of Littleton, CO and on Tuesday, December 15, 1992, at 7 p.m. in the City Council Chambers of the City of Englewood, CO. See ADDRESSES below.

ADDRESSES: Written comments on project scope should be sent to Mr. Raymond Amoroso, Project Manager, Regional Transportation District, 1600 Blake Street, Denver, Colorado 80202.

Scoping Meetings will be held at the following locations:

1. December 10, 1992—7 p.m.
City of Littleton; City Council Chambers, 2255 West Berry Avenue, Littleton, Colorado 80165
2. December 15, 1992—7 p.m.
City of Englewood; City Council Chambers, 3400 South Elati Street, Englewood, Colorado 80110.

FOR FURTHER INFORMATION CONTACT: Mr. Donald D. Cover, Transportation Representative, Federal Transit Administration, (303) 844-3242.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, RTD and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluate in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project; the proposed alternatives; the impact areas to be evaluated; the citizen involvement program; and the preliminary project schedule is being mailed to affected federal, State and local agencies and to interested parties on record. Others may

request scoping materials by contacting Mr. Raymond Amoruso, Project Manager, at the address above or by calling him at (303) 299-2531. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See **DATES** and **ADDRESSES** section above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Raymond Amoruso as previously described.

II. Description of Study Area and Project Need

The study corridor begins in the Central Business District of Denver and proceeds south and southwest to North Highlands Ranch Parkway following the general alignment of South Santa Fe Drive. The study area boundaries for the purposes of this study extend generally from University Boulevard on the east to Wadsworth boulevard on the west. The corridor has a reserved transit envelope between South Santa Fe Drive and the railroad right-of-way to the east of South Santa Fe Drive. Transit improvements are intended to alleviate traffic congestion in the Southwest Corridor and help achieve regional air quality goals by providing an alternative to the single occupant vehicle.

III. Alternatives

The alternatives proposed for the evaluation include the following: the No-Build alternative will serve as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area. The TSM alternative will consist of a non-capital intensive approach to addressing transportation problems in the corridor. A major consideration in developing the TSM alternative will be the operation of the Bus/High Occupancy Vehicle (HOV) lanes now planned for the center lanes of South Santa Fe Drive. A more capital intensive alternative which physically separates the Bus/HOV lanes from conflicting turning and crossing movements at intersections also will be evaluated. The

Busway and Light Rail Transit (LRT) alternatives will use the transit envelope between Santa Fe Drive and the railroad tracks. The Commuter Rail option assumes use of existing railroad tracks in the corridor with potential track capacity improvements.

IV. Probable Effects

FTA and RTD will evaluate all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination will include transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts to be evaluated in the analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous materials impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geological forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and ultimately the final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, RTD and locally elected officials will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: November 5, 1992.

Louis F. Mraz, Jr.,

Regional Administrator.

[FR Doc. 92-27313 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

Rulemaking, Research, and Enforcement Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs. In addition, the agency will discuss the comments to its notice on Strategic Planning.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on December 18, 1992, beginning at 10:15 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by December 10, 1992, to the address shown below. If sufficient time is available, questions received after the December 10 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by December 10, 1992, and the issues to be discussed will be mailed to interested personnel by December 14, 1992, and will be available at the meeting.

Also, the agency will hold a public meeting on its strategic planning efforts, on the same date, beginning at approximately 2 p.m.

ADDRESSES: Questions for the December 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. Both meetings will be held in room 2230, Department of Transportation Headquarters Building, 400 7th Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's rulemaking, research and enforcement programs, on December 18, 1992. The meeting will be held in room 2230, Department of Transportation Headquarters Building, 400 7th Street, SW., Washington, DC. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the

transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:20 a.m. to 4 p.m.

NHTSA will provide auxiliary aide to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366-1810, by COB December 9, 1992.

NHTSA's Office of Strategic Planning and Evaluation will discuss the comments received in response to the July 28, 1992, notice in the **Federal Register** on strategic planning. The agency has received more than 100 comments which it is currently summarizing. This office will also give a status report on the strategic planning program.

Issued: November 5, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-27307 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-61; Notice 1]

Receipt of Petition for Determination that Nonconforming 1989 Mercedes-Benz 260SE Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 Mercedes-Benz 260SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Mercedes-Benz 260SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is December 14, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(1) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1989 Mercedes-Benz 260SE (Model ID 126.020) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Mercedes-Benz 300SE (Model ID 126.024). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1989 Mercedes-Benz 300SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 260SE is substantially similar to the 300SE, and

differs mainly in engine size and "minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 260SE's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1989 model 260SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 model 300SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 260SE is identical to the certified 1989 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts*, *Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1989 model 260SE complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp that displays the seat belt symbol;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment:

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power-Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 Door Locks and Door Retention Components: Replacement of the rear door locks and rear door lock buttons.

Standard No. 208 Occupant Crash Protection: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel vent line between the fuel and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before

and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 14, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on November 15, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-27378 Filed 11-10-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 4, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1265.

Regulation ID Number: IA-120-86.

Type of Review: Extension.

Title: Capitalization of Interest.

Description: The regulations require taxpayers to maintain contemporaneous written records of estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Respondents: Individuals or households, farms, businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service.

room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-27333 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

[Number: 16-23]

Authorization to Sign Treasury Checks; Chief Disbursing Officer, Financial Management Service

Dated: November 3, 1992.

1. *Delegation.* By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101-05, the Chief Disbursing Officer, Financial Management Service, is delegated authority to sign, in that official's name, checks drawn against all accounts of the Secretary of the Treasury.

2. *Redelegation.* The Chief Disbursing Officer may delegate this authority to Disbursing Officers under that official's control and supervision.

3. *Procedure.* Checks signed by the Chief Disbursing Officer against accounts of the Secretary of the Treasury shall be signed as follows:

Secretary of the Treasury

By _____

Chief Disbursing Officer or Treasury Disbursing Officer.

4. *Cancellation.* Treasury Directive 16-23, "Authorization to Sign Treasury Checks," dated September 22, 1986, is superseded.

5. *Authority.* TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

6. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-27332 Filed 11-10-92; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Information Reporting Program Advisory Committee Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of open meeting.

There will be a meeting of the Information Reporting Program Advisory Committee (IRPAC) on Wednesday and Thursday, December 2 & 3, 1992. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, Northwest, Washington, DC. The meeting will begin at 10 a.m., on both days, concluding about mid-day on the 3rd. Topics to be discussed are listed below in a draft version of the agenda.

Draft Agenda for Meeting on December 2 & 3, 1992

Wednesday, December 2, 1992

- 10 a.m. Public Meeting Opens
 - Welcome Press & Public
 - Introductions

IRPAC Presentations

- Simplified Wage Reporting
- 1099 Uniformity
- Resolving Tax Accounting Discrepancies
- TIN Matching Prototype
- Payee Education
- 12 p.m. IRPAC in Camera Luncheon
- 1:30 p.m. IRPAC Presentation
 - IRP Call-Site
 - Electronic Bulletin Board
 - Improved Communications
 - Penalty Handbook Status
 - IRS/SSA Information Reporting Seminars
- 5:15 p.m. Adjourn for the Day

Thursday, December 3, 1992

- 10 a.m. Public Meeting Reconvenes

IRPAC Presentations

- Business Information Reporting
- Penalty Administration
- Backup Withholding Issues
- Nominee Issues
- 11:45 a.m. Summary & Closing Remarks
- 12 p.m. Adjourn

Note: Last minute changes to the topics under discussion are possible and could prevent advance notice.

DATES: The meeting, which will be open to the public, will be in a room that accommodates approximately 60 people, including members of IRPAC and IRS officials. Thirty seats will be reserved for the public and press and are available on a first-come, first-served basis. Due to the limited conference space, it is requested that organizations interested in attending send only one representative per organization. Notification of intent to attend the meeting must be made with Kate LaBuda no later than November 25, 1992. Notification of intent should include anticipated times that you will attend, e.g., morning or afternoon of the 2nd, or morning of the 3rd.

ADDRESSES: If you would like to have IRPAC consider a written statement, please written to Kate LaBuda at IRS, IRP Planning and Management Staff, EX:1P, room 2011, 1111 Constitution Avenue NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda, 202-622-3404 (not a toll-free number).

Dated: November 4, 1992.

John F. Devlin,

Executive Director, Information Reporting Program.

[FR Doc. 92-27426 Filed 11-10-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces a request for proposals from not-for-profit organizations to conduct an initiative grant exchange program designed to encourage increased private sector commitment to and involvement in international exchanges between U.S. and Andean environmentalists. All international participants will be nominated by USIA personnel overseas. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The announcement number is FY-93-5. Please refer to this number in all correspondence and telephone calls to Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on January 22, 1993. Faxed documents will not be accepted, nor will documents postmarked January 22, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after May 22, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by

the deadline to: U.S. Information Agency, REF: Citizen Exchange; Initiative Grant Competition, FY-93-5, Office of Grants Management (E/XE), room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT:

Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, Washington, DC 20547, telephone: (202) 619-5326, to request detailed application packets which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation guidance. Please specify the name of USIA Program Officer, Charlotte Peterson on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, "programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life."

Encouraging Environmental Awareness in the Andean Countries

This will be a two-week U.S. study tour for up to ten prominent environmentalists selected by USIS posts from Argentina, Bolivia, Colombia, Ecuador, and Peru. The program will introduce participants to environmental facilities and organizations in the U.S., focusing on government and private citizen efforts to address environmental issues and increase public awareness. Major concerns to be addressed include: the garnering of citizen support and active public participation in ecological arenas; legal issues including methods of changing laws to benefit the environment, lobbying and effective ways of working with government to achieve ecological objectives; environmental degradation caused by illegal drug production in the region. Participants will also study the operation of national parks, including publicity and promotion of long-term benefits of the parks; relations between environmental organizations and the media; fund-raising techniques and related issues.

The program will include a follow-up visit by a team of representatives from American environmental organizations to several cities in the region to conduct seminars and workshops.

Funding: Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity the applicant's familiarity with

environmental issues, and ability to carry out the program successfully. Since USA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process.

Funds requested from USIA cannot exceed \$100,000 for support of this program. However, organizations with less than four years of successful experience in managing international exchange programs are limited to grants of \$60,000.

Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) percent of the total funds required from USIA.

Administrative costs are defined as salaries, benefits, other direct and indirect costs. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Application Requirements: Proposals must be structured in accordance with the instructions contained in the application package.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of American Republics Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant resides with USIA's contracting officer.

The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria: USIA will consider proposals based on the following criteria:

1. **Quality of Program Idea:** Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. **Institution Reputation/Ability Evaluations:** Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. **Project Personnel:** Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. **Program Planning:** Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. **Thematic Expertise:** Proposal should demonstrate expertise in the subject area.

6. **Cross-Cultural Sensitivity/Area Expertise:** Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. **Ability to Achieve Program Objectives:** Objectives should be reasonable, feasible, and flexible.

Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. **Multiplier Effect:** Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. **Cost-Effectiveness:** The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. **Cost-Sharing:** Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. **Follow-on Activities:** Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA supported programs are not isolated events.

12. **Project Evaluation:** Proposals should include a plan to evaluate the activity's success.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about April 16, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: November 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-27136 Filed 11-10-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 219

Thursday, November 12, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board.

DATE AND TIME: The regular meeting of the Board will be held November 12, 1992. The meeting is scheduled to be held at the office of the Farm Credit Administration in McLean, Virginia, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

C. New Business

1. Regulations

a. Loan Policies and Operations; Collateral Evaluation* Requirements, Actions on

Applications, and Review of Credit Decisions [Final].

D. Other

1. FCS Building Association 1993 Budget

Closed Session

A. Reports

1. OSMO Quarterly Report

B. New Business

1. Enforcement Actions

Dated: November 9, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 92-27597 filed 11-9-92; 3:05pm]

BILLING CODE 6705-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-29]

TIME AND DATE: November 17, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public, except for a closed portion.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-448-450 (Remand) (Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan)
5. Continuation of discussion of APO matters
6. Outstanding action jacket requests—
 1. GC-92-080, Modification of cease and desist order in Inv. No. 337-TA-276, EPROMs
 2. GC-92-081, Violation of 24-hour rule in an investigation under title VII of the Tariff Act of 1930

3. GC-92-082, Interlocutory appeals concerning APOs in Invs. Nos. 337-TA-331, 334, *Certain Microcomputer Controllers and Certain Condensers*
4. GC-92-088, Initial determination in Inv. No. 337-TA-334, *Certain Condensers*
5. GC-92-091, Final rules and APO forms relating to the U.S.-Canada Free Trade Agreement
6. ID-92-025, Proposed changes in language to Senate Bill 2909
7. ID-92-040, Institution of an investigation under section 332 of the Tariff Act of 1930 on communications technology and equipment
7. Any items left over from previous agenda

On November 6, 1992, the Commission, in conformity with 19 C.F.R. 201.36, determined that it may be necessary to close a portion of the meeting of November 17, 1992. Voting in the affirmative were Chairman Don E. Newquist, Vice Chairman Peter S. Watson, Commissioners David B. Rohr, Anne E. Brunsdale, Carol T. Crawford, and Janet A. Nuzum. This action was taken pursuant to the specific exemptions of 5 U.S.C. 552b(c)(3), (c)(4), and (c)(5), and in conformity with 19 C.F.R. 201.36(b)(3), (b)(4), and (b)(5), and considering the public interest. The persons expected to be present at this closed portion are the members of the Commission, the members of the Commissioners' personal staffs, and members of the Commission's staff.

CONTACT PERSON FOR MORE

INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: November 8, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27514 Filed 11-9-92; 2:49 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register

Vol. 57, No. 219

Thursday, November 12, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meetings

Correction

In notice document 92-24871 beginning on page 48514 in the issue of Monday, October 28, 1992, make the following correction:

On page 48515, in the second column, in the first complete paragraph, in the

third line, "9:30 p.m." should read "9:30 a.m."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 57

RIN 0905-AD63

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans

Correction

In rule document 92-23919 beginning on page 45725 in the issue of Monday, October 5, 1992, make the following corrections:

1. On page 45729, in the first column, in paragraph 4., in the third line "(6)" should read "(c)".

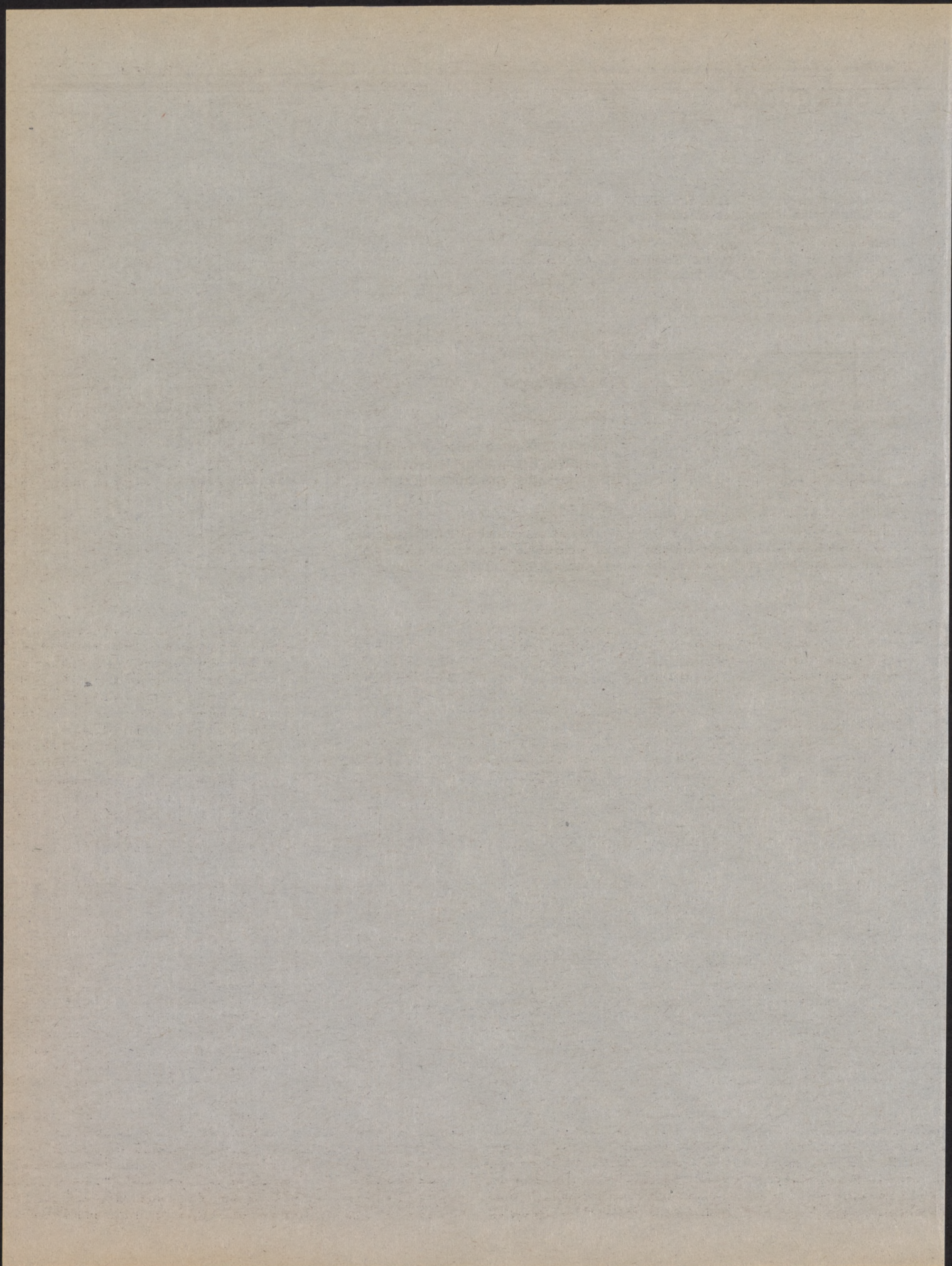
§ 57.701 [Corrected]

2. On page 45736, in the first column, in § 57.701, in the seventh line, (42 U.S.C. 295g8(d))" should read "(42 U.S.C. 295g-8(d))".

§ 57.2402. [Corrected]

3. On page 45741, in the first column, in § 57.2402, in amendatory instruction 3., in the second line "(b)" should read "(f)" and in the third line, after "nursing" insert a comma.

BILLING CODE 1505-01-D





**Thursday
November 12, 1992**

Part II

**Department of
Agriculture**

Cooperative State Research Service

**Food and Agricultural Sciences National
Needs Graduate Fellowships Grants
Program; Solicitation of Proposals for
Fiscal Year 1993; Notice**

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences
National Needs Graduate Fellowships
Grants Program; Solicitation of
Proposals for Fiscal Year 1993

Purpose: Notice is hereby given that under the authority contained in section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), the Cooperative State Research Service (CSRS) through its Office of Higher Education Programs (HEP), will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

Eligibility: Please note that the authorizing legislation for the National Needs Graduate Fellowship Program allows the award of grants to colleges and universities only; awards cannot be made to research foundations established by the college or university.

Available funds: The amount available for this purpose in Fiscal Year 1993 is approximately \$3,395,000.

Targeted areas: Food and agricultural sciences areas appropriate for fellowship applications are those in which shortages of expertise have been determined and targeted by CSRS-HEP for national needs doctoral fellowship support. Please note that due to the funding level of this program over the last six fiscal years, CSRS supports the six national needs areas funded in past years on a rotating basis of three needs areas per fiscal year. The targeted national needs areas to be supported in FY 1993 are: Biotechnology—Plant; Engineering—Food, Forest, Biological, or Agricultural; and Water Science. Approximately one-third of the available funds will be allocated to each of the three national needs areas. CSRS plans to support the remaining three national needs areas (Biotechnology—Animal; Human Nutrition and/or Food Science; and Marketing or Management—Food, Forest Products, or Agribusiness) in FY 1994. Although this procedure limits the participation of an applicant interested in a specific targeted national needs area to alternating years, it increases the likelihood that the applicant will obtain funding under the program each time a grant application is submitted.

Proposal limitations: For the Fiscal Year 1993 program, a proposal may request funding in only one (1) national needs area. A proposal may request a

minimum of two (2) fellowships and a maximum of four (4) fellowships in the national needs area for which funding is requested. No limitation is placed on the number of proposals an institution may submit. However, the same college or equivalent administrative unit within an institution may submit a maximum of three (3) proposals: One (1) in each of the three national needs areas supported. (No more than one proposal may be submitted in any one national needs area by the same college or equivalent administrative unit.) Additionally, total funds awarded to an institution under the Program in Fiscal Year 1993 shall not exceed \$324,000.

Financial and other limitations: Each institution funded will receive \$54,000 for each doctoral fellowship awarded. However, it is anticipated that total program funds available will not be evenly divisible by \$54,000. Therefore, one fellowship will be supported on a partial basis with a lesser amount of funds. Except in the case of the partially funded fellowship, fellowship monies must be used to: (1) Support the same doctoral fellow for three (3) years at \$17,000 per year; and (2) provide for an institutional annual cost-of-education allowance of \$1,000, not to exceed a total of \$3,000 over the three-year duration of the fellowship. Please note that beginning in FY 1991 the yearly doctoral stipend was increased from \$15,000 to \$17,000 in an attempt to keep the USDA support at a level that is competitive with fellowships offered outside the food and agricultural sciences community.

While proposals must document institution willingness to recruit and train at least two (2) but not more than four (4) fellows in a national needs area, CSRS may fund fewer fellows than requested in a proposal.

This program is highly competitive, and it is anticipated that available funding will support approximately 63 doctoral fellows through seven grants in each of the three targeted areas.

Application information: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply to the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. Applicants should be aware that proposals must be typed on one side of the page only, using a font no smaller than ten characters per inch, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. Additionally, applicants are cautioned to comply with the 20-page limitation for

the narrative section of the proposal and the inclusion of summary faculty vitae through the use of Form CSRS-708.

Copies of the Application Kit may be requested from: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; 14th and Independence Avenue SW.; Washington, DC 20250-2200; telephone number (202) 401-5048.

When and where to submit proposals. Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalog must be submitted. Proposals submitted through the mail should be sent to the address listed above and must be postmarked by February 10, 1993. Hand-delivered proposals must be submitted by February 10, 1993, to an express mail or a courier service or brought to room 303, Aerospace Center 901 D Street, SW., Washington, DC 20024. Proposals transmitted via a facsimile (FAX) machine will not be accepted.

Applicable regulations: This program is subject to the provisions found in 7 CFR part 3402 (52 FR 4712, February 13, 1987, as amended by 55 FR 2214, January 22, 1990). In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended; the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017; and the New Restrictions on Lobbying, 7 CFR part 3018, apply to this program.

Supplementary information: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524-0024.

Done at Washington, DC, this 8th day of October 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92-27168 Filed 11-10-92; 8:45 am]

BILLING CODE 3410-22-M

Federal Register

Thursday
November 12, 1992

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 503 and 549

Administrative Safeguards for Psychiatric Treatment and Medication of Inmates; Amended Listings of the Bureau of Prisons' Central Office, Regional Offices, Institutions, and Staff Training Centers; Interim and Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

Control, Custody, Care, Treatment and Instruction of Inmates; Administrative Safeguards for Psychiatric Treatment and Medication

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on Medical Services to provide a statement of administrative procedural safeguards prior to the provision of involuntary psychiatric treatment and medication. Title 18 U.S.C. sections 4241 through 4247 and federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and/or medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides an inmate with the necessary judicial due process hearing, and no further court authorization is needed for the admission decision. These interim regulations codify the procedures used by qualified health personnel to assess and document an inmate's ability to give informed consent to voluntary admission to a mental health treatment unit and to the voluntary use of psychotropic medications. The regulations specify that, absent an emergency situation, administrative due process procedures are to be provided to an inmate prior to administering involuntary treatment or medication. The intent of this amendment is to affirm the existence of appropriate administrative due process procedures in the provision of necessary health care to inmates, consistent with community standards.

DATES: Effective: November 12, 1992.

Comments due by December 28, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Medical Services in order to define existing administrative safeguards in the provision of psychiatric treatment, including medication. These interim regulations codify the procedures used by qualified health personnel to assess and document an inmate's ability to give informed consent to voluntary

admission to a mental health treatment unit and the voluntary use of psychotropic medications. The regulations specify that, absent an emergency situation, administrative due process procedures are provided to the inmate by qualified health personnel prior to administering involuntary treatment, including medication.

In February 1990, the Supreme Court ruled in *State of Washington, v. Harper* that absent a psychiatric emergency, psychotropic medications could be given on an involuntary basis to an involuntarily committed inmate only after certain administrative procedures were followed. Because these procedures are constitutionally required to protect the liberty interests of inmates, the Bureau finds cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date, and is implementing this statement of the Bureau's administrative procedures as an interim rule. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 549

Prisoners.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 549 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management**PART 549—MEDICAL SERVICES**

1. The authority citation for 28 CFR part 549 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241-4247, 5006-5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In 28 CFR part 549, subpart C, consisting of §§ 549.40 through 549.43, is added to read as follows:

Subpart C—Administrative Safeguards for Psychiatric Treatment and Medication

Sec.

549.40 Use of psychotropic medication.

549.41 Voluntary admission and psychotropic medication.

549.42 Involuntary admission.

549.43 Involuntary psychiatric treatment and medication.

§ 549.40 Use of psychotropic medications.

Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.

§ 549.41 Voluntary admission and psychotropic medication.

(a) A sentenced inmate may be voluntarily admitted for psychiatric treatment and medication when, in the professional judgment of qualified health personnel, such inmate would benefit from such treatment and demonstrates the ability to give informed consent to such admission. The assessment of the inmate's ability to give informed consent will be documented in the individual's medical record by qualified health personnel.

(b) If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained, and his or her ability to give such consent must be documented in the medical record by qualified health personnel.

§ 549.42 Involuntary admission.

A court determination is necessary for involuntary hospitalization for psychiatric treatment. A sentenced inmate, not currently committed for psychiatric treatment, who is not able or willing to voluntarily consent either to psychiatric admission or to medication, is subject to judicial involuntary commitment procedures. Even after an inmate is involuntarily committed, staff shall follow the administrative due process procedures specified in § 549.43 of this subpart.

§ 549.43 Involuntary psychiatric treatment and medication.

Title 18 U.S.C. 4241-4247 and federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides the judicial due process hearing, and no further judicial authorization is needed for the

admission decision. However, in order to administer treatment or psychotropic medication on an involuntary basis, further administrative due process procedures, as specified in this section, must be provided to the inmate. Except as provided for in paragraph (b) of this section, the procedures outlined herein must be followed after a person is committed for hospitalization and prior to administering involuntary treatment, including medication.

(a) *Procedures:* When an inmate will not or cannot provide voluntary written informed consent for psychotropic medication, the inmate will be scheduled for an administrative hearing. Absent an emergency situation, the inmate will not be medicated prior to the hearing. In regard to the hearing, the inmate will be given the following procedural safeguards:

(1) Staff shall provide 24-hour advance written notice of the date, time, place, and purpose of the hearing, including the reasons for the medication proposal.

(2) Staff shall inform the inmate of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, the institution mental health division administrator shall appoint a staff representative. Witnesses should be called if they have information relevant to the inmate's mental condition and/or need for medication, and if they are reasonably available. Witnesses who only have repetitive information need not be called.

(3) The hearing is to be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(4) The treating/evaluating psychiatrist/clinician must be present at the hearing and must present clinical data and background information relative to the need for medication. Members of the treating/evaluating team may also attend the hearing.

(5) The psychiatrist conducting the hearing shall determine whether treatment or psychotropic medication is necessary in order to attempt to make the inmate competent for trial or is necessary because the inmate is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center or a regular prison. The psychiatrist shall prepare a written report regarding the decision.

(6) The inmate shall be given a copy of the report and shall be advised that he or she may submit an appeal to the institution mental health division administrator regarding the decision within 24 hours of the decision and that the administrator shall review the decision within 24 hours of the inmate's appeal. The administrator shall ensure that the inmate received all necessary procedural protections and that the justification for involuntary treatment or medication is appropriate. Upon request of the inmate, the staff representative shall assist the inmate in preparing and submitting the appeal.

(7) If the inmate appeals, absent a psychiatric emergency, medication will not be administered before the administrator's decision. The inmate's appeal, which may be handwritten, must be filed within 24 hours of the inmate's receipt of the decision.

(8) A psychiatrist, other than the attending psychiatrist, shall provide follow-up monitoring of the patient's treatment or medication at least once every 30 days after the hearing. The follow-up shall be documented in the medical record.

(b) *Emergencies:* For purpose of this subpart, a psychiatric emergency is defined as one in which a person is suffering from a mental illness which makes him or her an immediate threat of bodily harm to self or others, or of serious destruction of property. During a psychiatric emergency, psychotropic medication may be administered when the medication constitutes an appropriate treatment for the mental illness and less restrictive alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective.

(c) *Exceptions:* Title 18 United States Code, sections 4241 through 4247 do not apply to military prisoners, unsentenced Immigration and Naturalization Service (INS) detainees, unsentenced prisoners in Bureau custody as a result of a court order (e.g. a civil contemnor), state or territorial prisoners, and District of Columbia Code offenders. For those persons not covered by sections 4241-4247, the decision to involuntarily admit the person to the hospital must be made at an administrative hearing meeting the requirements of *Vitek v. Jones*. The decision to provide involuntary treatment, including medication, shall nonetheless be made at an administrative hearing in compliance with § 549.43.

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BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

28 CFR Part 503

Amended Listings of the Bureau of Prisons' Central Office, Regional Offices, Institutions, and Staff Training Centers

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending the listing of its Central Office, Regional Offices, Institutions, and Staff Training Centers in order to reflect the designation of a new Federal Detention Center at Guaynabo, PR; the designation of new Federal Correctional Institutions at Estill, SC, Florence, CO, Manchester, KY, and at Fort Dix, NJ; the designation of a new Low Security Correctional Institution at Allenwood, PA; the designation of the former Federal Correctional Institution at Lexington, KY, as a Federal Medical Center, and change in addresses for the Western Regional Office, the National Legal Training Center (formerly the National Paralegal Training Center), and the Management and Specialty Training Center.

EFFECTIVE DATE: November 12, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its listing of Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers which was last amended in the *Federal Register* on July 10, 1991 (56 FR 31531).

Because this rule deals with agency organization and imposes no restrictions upon inmates, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the

Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 503

Agency organization and functions.
Thomas R. Kane,
Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter A of 28 CFR chapter V is amended as set forth below.

Subchapter A—General Management and Administration

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

1. The authority citation for 28 CFR part 503 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4003, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 503.2, paragraphs (b)(3) through (7), (c) and (d) are redesignated as (b)(4)

through (8), (d) and (e) respectively, and new paragraphs (b)(3) and (c) are added to read as follows:

§ 503.2 Bureau of Prisons Northeast Regional Office.

(b) * * *
(3) FCI Fort Dix, NJ 08640;

(c) Low Security Correctional Institution (LSCI) Allenwood, Montgomery, PA 16701.

3. In § 503.3, paragraph (b)(3) is revised and a new paragraph (d) is added to read as follows:

§ 503.3 Bureau of Prisons Mid-Atlantic Regional Office.

(b) * * *
(3) FCI Manchester, KY 40962;

(d) Federal Medical Center (FMC), Lexington, KY 41101.

4. In § 503.4, paragraphs (b)(1) through (4) are redesignated as paragraphs (b)(2) through (5), and new paragraphs (b)(1) and (e) are added to read as follows:

§ 503.4 Bureau of Prisons Southeast Regional Office.

(b) * * *
(1) FCI Estill, SC 29918;

(e) Metropolitan Detention Center (MDC) Guaynabo, PR 00934.

5. In § 503.5, paragraphs (b)(2) and (3) are redesignated as paragraphs (b)(3) and (4), and new paragraph (b)(2) is added to read as follows:

§ 503.5 Bureau of Prisons North Central Regional Office.

(b) * * *
(2) FCI Florence, CO 81292;

6. In § 503.7, the first sentence of the introductory text is revised to read as follows:

§ 503.7 Bureau of Prisons Western Regional Office.

The Bureau of Prisons Western Regional Office is located at 7950 Dublin Boulevard, 3rd Floor, Dublin, CA 94568.

8. In § 503.8, paragraphs (b) and (c) are revised to read as follows:

§ 503.8 Bureau of Prisons Staff Training Centers.

(b) Management and Specialty Training Center, 791 Chambers Road, Aurora, CO 80011;

(c) National Legal Training Center, 791 Chambers Road, Aurora, CO 80011;

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Department of Labor

Job Training Partnership Act Title II-A, Title III and Title I-Section 124; Notice

DEPARTMENT OF LABOR**Employment and Training Administration****Job Training Partnership Act Title II-A, Title III and Title I-Section 124; Reporting of Standardized Program Information**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of standardized program information reporting for title II-A, title III and title I-section 124 (training programs for older individuals).

SUMMARY: The Department of Labor (Department or DOL) is issuing requirements for a reporting system for programs funded under title II-A, title III and title I-section 124 of the Job Training Partnership Act (JTPA). (Note: Upon implementation of the Job Training Reform Amendments, affected titles will be titles II-A, II-C and III.) This reporting system requires States to maintain socio-economic, program participation and outcome information on each participant in the above referenced programs and to transmit this information to the Department. Additionally, service delivery areas (SDAs) will be required to maintain, but not report, records on selected characteristics of applicants (eligible and ineligible) to comply with the nondiscrimination and equal opportunity provisions of the Act. Note: Applicants are those persons seeking JTPA services, who have filed a completed application and for whom a formal eligibility determination was made.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Telephone (202) 219-8680 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 12, 1992 (57 FR 8820), the Department of Labor (Department or DOL) published the proposed reporting system in the *Federal Register*. Interested parties were invited to send written comments through April 13, 1992. The proposal was also forwarded to the Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act.

On July 6, 1992 the Department's Directorate of Civil Rights (DCR) issued data collection and reporting requirements that duplicated, in part, some of the participant information requested in this proposal and also required an additional record-keeping system on JTPA applicants. DCR subsequently suspended its record-keeping requirements on September 22

pending forthcoming regulations implementing the equal opportunity and nondiscrimination provisions of the Act. In an effort to keep the reporting burden at a reasonable level, both DCR and ETA have agreed to consolidate their record-keeping requirements into a single system of records on JTPA applicants, participants and trainees to serve the purposes of both programs. Much of the proposed DCR collection is therefore subsumed in this system. Any other information that DCR would collect will be submitted for review and public comment under the Paperwork Reduction Act prior to implementation.

These events, combined with numerous comments received on the proposed standardized program information reporting, have resulted in a substantially revised format and reporting instructions. The purpose of this notice is to advise the system on the nature of the comments received and the final action taken pursuant to the OMB review. Caution: Significant changes have been made to the original proposal; those affected should carefully review this document.

A. Authority and Purpose

Section 165 of the Job Training Partnership Act (JTPA) requires that grant recipients maintain and submit information that the Secretary of Labor (Secretary) needs to appraise the performance of Departmental programs. In particular, section 165(c)(2) requires the maintenance of a management information system designed to facilitate the uniform compilation and analysis of programmatic data necessary for reporting, monitoring and evaluation purposes. The Department is making refinements to its current management information system that will ensure greater consistency and comparability in participant-level information to make more meaningful comparisons of client characteristics, service delivery and program results.

As a part of this process, and consistent with the intent of Congress that postprogram performance standards measure longer periods of retention, the Department will test the feasibility and technical implications of setting future postprogram performance standards based on unemployment insurance (UI) wage record data.

B. Reasons for Reporting Participant-Level Information

JTPA policymakers at all levels—Federal, State and local—need more meaningful feedback on whether policies that create changes in program design and client targeting actually result in performance improvements.

Effective program management is dependent on adequate and timely information on what local JTPA programs are accomplishing and how they are achieving these results. JTPA policymakers and program managers can use participant-level information to stimulate improved program performance, to communicate the value of public programs to elected officials and other decisionmakers, to strengthen public confidence in federal employment and training activities, and to leverage resources to maintain and enhance program operations.

Uniform participant-level data are needed to address important issues regarding the scope of services and the nature of employment that JTPA is providing to its clients, particularly the hardest-to-serve. Improved program accountability is not only a concern at the federal level. States and localities are becoming increasingly interested in determining how equitably services are provided to clients, how likely given client groups are to get placed in and retain employment, and the relationship between services provided, time spent in training, and the quality of job placements in terms of wages and hours worked.

Since JTPA's inception, increased earnings and employment have been among the program's primary objectives. Current federal reporting provides no information on the kinds of jobs that various client groups obtain after program participation, and the nature of the occupational training and supportive services that may contribute to different earnings outcomes. Moreover, States are required to report only aggregate data from their SDAs. Such information provides estimates of SDA performance and forms the basis of JTPA's performance standards. Current reporting cannot be used at the federal level, however, to examine what services different demographic groups receive locally or what happens to them after they leave the program.

Establishing a national database with uniform information on JTPA clients will enable the Secretary to study the program at different levels—nationally, or at a regional, State or local level—and to provide feedback to States and localities on such studies. Availability of information derived from individual participant records will also lessen the frequency with which DOL and other data users undertake costly field surveys that may disrupt State and local operations. It will maximize program accountability by enabling the Department to respond to a variety of requests for detailed information on the

characteristics of those enrolled in various activities and services and the outcomes they obtain. The new data system will provide, for the first time, a suitable national data base to enable the Department to provide technical guidance to SDAs in establishing performance goals for local service providers.

C. Description of the Standardized Program Information to be Reported

The new record-keeping system for JTPA will require each SDA to maintain selected standardized information on all applicants (eligible and ineligible), participants and trainees. Information on an applicant's race/ethnicity, age, gender and disability status will be retained at the SDA-level to comply with the record-keeping requirements of section 167 of JTPA implementing the nondiscrimination and equal opportunity provisions of the Act. **Note:** Applicants are those persons seeking JTPA services, who have filed a completed application and for whom a formal eligibility determination was made.

States will be required to maintain selected standardized information on all program participants in JTPA title IIA (including the 78% and 6% funded programs), title III (Federal discretionary, State and substate programs), and title I-section 124 (programs for Older Workers) and to report this information after participants have terminated, using a prescribed machine-readable format and coding scheme. It shall be transmitted to a data base contractor that will assist the Department. For each program year, client characteristics, program activity, and outcome data, including available follow-up information on all participants terminating during the full program year, will be reported. Follow-up information can be limited to reporting on a sample of participants using the sampling methodology described in the instructions in the JTPA Annual Status Report (JASR) and Worker Adjustment Annual Program Report (WAPR). **Note:** Upon implementation of the Job Training Reform Amendments in July 1993, affected programs will be: JTPA title IIA (77 percent, 5 percent-services for older individuals and 5 percent-incentive grant funded programs); title IIC (82 percent and 5 percent incentive grant funded programs); and title III (Federal discretionary, State and substate programs).

Effective Date

Program Year 1992 (July 1, 1992-June 30, 1993) will be considered a transition

year. During this period, a dual system of reporting will be required as follows:

1. Aggregate data required in the JASR and WAPR will be reported no later than August 15, 1993, and
2. Existing participant records for all those terminating during the program year and needed to complete the JASR and WAPR will be reported no later than November 15, 1993. For this transition year these records need only include items that are currently required in the JASR/WAPR. New reporting items should, however, be reported if they are available.

After Program Year 1992 participant data will be reported twice each year.

1. By August 15 records that are complete in all respects except for follow-up information must be reported on all participants who have terminated during the program year.
2. By November 15 complete records, including appropriate follow-up information, must be reported for all participants who have terminated during the program year.

D. Discussion of Comments

There were 75 comments received during the comment period. Additional comments received after the deadline were reviewed and considered to the extent possible. The position of the Department is indicated below and reflected in the reporting instructions as appropriate.

Implementation Date

There was widespread concern among respondents about the effective date of this reporting system. The Department recognizes that the implementation schedule referred to in the March 12 proposal is no longer feasible. Full implementation of the reporting system is now scheduled to take place on July 1, 1993. It will, however, still be necessary to submit records that include, at a minimum, data items required in the JASR and WAPR for all participants terminating from the subject programs during PY 1992. The Department will not require SDAs to collect participant information retroactively. That is, on the date of SPIR implementation, it will not be necessary to determine new reporting items for participants already in the program and past the point when this information would normally be determined or collected. Items that are new or represent a significant modification need not be reported in PY 1992 until MIS procedures can be modified and properly implemented. Thus, PY 1992 will be treated as a transition year to phase in the new reporting items so that complete information will be available for all

participants terminating during PY 1993 (July 1, 1993-June 30, 1994), including those participants enrolled in PY 1992 and carried-over.

Cost Concerns and Federal Assistance During Implementation

A large number of those submitting comments believed that DOL underestimated the costs involved in implementing the new system and requested financial aid and technical assistance. The Department, in order to assist in the transition needed to implement provisions required in the amendments, will allow States and SDAs to use six percent funds available for technical assistance in PY 1992 to make the necessary adjustments to their management information systems. In addition, the Department is hiring a contractor who will be available to work with States to facilitate the implementation. States that are most concerned about implementation costs are those that have limited MIS capabilities and/or those with limited funds available to upgrade their MIS. The Department and its contractor will give special priority to assisting these States.

This contractor, to be retained by ETA during PY 1992, will establish a system for data transmission, design State-specific transmission procedures, and provide needed support and technical assistance for their implementation. To minimize disruption and burden, the contractor will adapt its procedures to take advantage of existing automated systems in each State and will continue to address, on-site if necessary, technical problems that arise after data transmission is implemented.

States will provide the contractor with information about the capabilities of their systems and will supply sample transmissions during the development process. With the help and advice of States, the contractor will identify any reporting problems and take corrective action to ease transition during development, implementation, and ongoing system operation.

Universal Reporting

It was suggested by a few respondents that it would be more cost efficient to collect data on a sample of participants rather than for all participants terminating from the program each year.

After careful consideration, the Department rejected sampling because of (1) the complexity of a sample design needed to produce appropriate estimates of client subgroups both at the State and local level; (2) the burden on States to ensure that proper samples are

drawn each year; and (3) the potential for seriously flawed, biased data if sampling procedures are not followed precisely. In addition, advances in computer technology now make data collection and universal reporting less complex, burdensome, and expensive than following and monitoring complex sampling procedures. Finally, in the absence of universal reporting, other administrative reports could not be eliminated.

Older Worker Program (3% State Set-Aside) Now Included in SPIR Reporting

In its March proposal, the Department excluded the Title II-B and State set-aside programs from this new reporting system because it would be too burdensome to collect for programs that were not subject to performance standards. Since that time, however, JTPA amendments have been enacted that require mandatory performance standards for the programs serving older workers (title I-section 124 or, after implementation of the Job Training Reform Amendments, title IIA-section 204(d)). The amendments further call for these standards to be consistent with those in title II. In order to have sufficient data to develop these standards, reporting for participants in this program will now be required.

Reporting on Education Set-Aside Programs and Summer Youth Programs

The March 12 notice in the **Federal Register** requested comment on the desirability of establishing an independent reporting system that would collect aggregate characteristic data on participants in the State set-aside programs. The majority of the respondents favored establishing this type of expanded reporting. The Department intends to propose shortly a new aggregate report for the 8% set-asides, similar to what is now being collected for the summer youth program. Reporting of summary data on participants in the title II-B summer youth programs will continue.

Unemployment Insurance (UI) Wage Records

Several respondents suggested that using UI wage records to obtain followup information would be easier and more cost efficient than the current telephone survey method.

Since passage of the Job Training Reform Amendments, the DOL believes that Congress intends that JTPA performance standards measure longer periods of employment retention. As a result, during the next year, the Department will test the feasibility and technical implications of setting future

postprogram performance standards based on UI wage record data. These data can capture a person's labor force experience at six months or longer after program participation, and are, therefore, more consistent with Congressional intent.

In order to adequately inform and prepare States for differences in performance measurement using administrative records as compared to self-reported data, the Department needs to obtain more detailed information on the extent to which job placements are out-of-state or not covered by State UI data systems. Two line items have been added to this reporting system that will provide the needed detailed information to enable States to make appropriate adjustments to their SDA performance standards when using UI wage records.

Use of Social Security Numbers and Privacy Protection

Some felt that the Department had not adequately explained how the information would be used, how it would be accessed, and how the confidentiality of program participants would be protected, particularly if ETA requires the use of individual social security numbers.

Since it has now been determined that social security numbers will be required on all records, confidentiality of the reported information is particularly important. The Department assumes full responsibility for protecting the confidentiality of the data and will ensure that data files are maintained according to applicable Federal laws, with particular emphasis upon compliance with the provisions of the Privacy Act and the Freedom of Information act. It will remove social security numbers from participant files before they are shared with Federal agencies and other users.

During PY 1992, the Department will actively seek advice from the employment and training community, outside experts and public interest groups on the most useful ways to compile SPIR data to produce valuable program information while fully protecting the privacy of JTPA participants. Products are expected to include regularly scheduled reports, occasional reports on special topics, resident data bases at DOL regional and national offices to respond to field queries, and "sanitized" public use files that interested parties can use to conduct their own analyses.

The Department will sponsor and work closely with a data users group whose membership will consist of representatives from all levels of the

JTPA community. This group will identify needed products, ways to disseminate these to the system, and will provide vital two-way communication between the field and the Department.

Reporting of Family Status

The family status item has been substantially changed in response to numerous suggestions in the written comments. Many comments assumed, incorrectly, that the definitions for this item affected eligibility determinations. The purpose of this item is to identify four general categories of family status that are useful for evaluation. It does not in any way reduce the authority of Governors to establish certain definitions that affect program eligibility.

Based on the concerns expressed by commenters, the four categories of family status and associated definitions have been simplified and clarified. The instructions state that, though the categories are meant to be inclusive, there may be cases that do not technically fit into the scheme, and that these cases should be assigned using "best judgment."

Coding Occupational Skill Training and Employment at Termination

The Secretary specifically requested comments on the best system of occupational coding for the reporting system. With some exceptions, respondents supported using the Dictionary of Occupational Titles (DOT) coding system, since many JTPA programs already use the DOT code. The Department's regional offices reported that JTPA programs in 44 States use DOT codes to some extent in recording information about participants. Of these, programs in 26 States use the full 9-digit DOT code.

The Department has accepted the advice of the National Occupational Information Coordinating Committee (NOICC) and will allow several options in reporting occupational information. Because of existing "crosswalk" occupational information. Because of existing "crosswalk" computer programs, it will be possible for the Department to translate the various coding options into a database consisting of a single coding scheme.

Coding the job at termination and any occupational training received is required on this record. For classifying the job at termination and on-the-job training (OJT), the 9-digit DOT code or the 5-digit OES (Occupational Employment Statistics) code that best describes the occupation must be

recorded. If the participant is receiving classroom occupational skills training, either the above mentioned codes or the 6-digit CIP (Classification of Instructional Programs) code that best characterizes the training must be recorded.

The Department will provide technical assistance to data users to ease the burden and streamline use of the three coding systems.

Recording Training Activities

Many comments were received regarding the Department's proposed method for recording participants' training activities. Most of the comments that addressed this issue favored the reporting of planned rather than actual hours, along with an indication of completion. Several, however, expressed serious concerns about the value of planned hours as an analytical tool. In particular, the DOL Office of Inspector General (OIG) and the General Accounting Office (GAO) viewed planned hours as an inadequate indicator of training participation because of the frequency of non-completion. For those who drop out of training, it would be impossible to determine what proportion of the planned training they actually received; thus, prohibiting meaningful comparisons of JTPA program participation and results.

A significant number of comments recommended recording actual hours in the activity and noted that planned hours may vary during a participant's enrollment in JTPA. Requesting SDAs to provide the actual number of hours in certain activities is feasible given a GAO analysis of SDA training contracts conducted in 1989. The GAO report found that SDAs "consistently gathered the number of hours spent in occupational training activities, including classroom occupational and on-the-job training." Several commenters suggested it would be difficult to supply any meaningful measures of the hours spent in job search assistance and activities that tend to be provided in combination with training and are less likely to be scheduled on a regular basis.

In response to these comments, the Department is requiring that *actual* hours of participation and activity completion be reported for five training activity categories. These categories are: (1) Basic skills training; (2) occupational skills training (non-OJT); (3) OJT; (4) work experience; and (5) other employment skills training. In two additional activity/service categories, it will be necessary to only record whether there was any participation. These

additional groups are: Job search assistance (title IIA only) and basic readjustment services (title III only).

Another dimension of training participation which is currently collected and reported is a measure of duration in training. To accurately reflect this information in the SPIR, two items—the date on which training started and ended—have been added to the record that will show the time period within which training occurs. This information combined with the actual hours spent in training should vastly improve program information on how much training is provided to address the employability needs of certain clients to achieve program results. Weeks of training will no longer be collected as a distinct data element, since the total can be derived from these items.

Working for Same Employer at Follow-Up

Seven commenters questioned the usefulness of a new item for the follow-up interview that asks whether those who were placed in jobs are still working for the same employer. Currently follow-up information is collected on a person's retention in the labor market—whether or not they are employed 3 months after they leave the program. We do not know from current follow-up information to what extent a person is retained in the same job or finds other employment. This item, when combined with more detailed information about the initial job, will provide insight into what types of employment lead to increased job stability or movement to better paying jobs.

Compatibility With JTPA Amendments and Other Federal Programs

The Department has carefully reviewed the reporting format to ensure reporting items reflect, to the extent possible, operational and definitional refinements in the amendments, and other recently passed legislation, including the Nontraditional Employment for Women (NEW) Act, Public Law 102-235 of 1992. Staff met with representatives from the Job Opportunities and Basic Skills Training (JOBS) program and compared our administrative reports with those in other Federal agencies. These revisions reflect some suggested improvements to ease coordination by making JTPA's management information system more compatible with other federal programs, and other refinements needed to conform JTPA's administrative reporting to new statutory requirements.

The following changes in reporting were made so that data items are more

comparable with reporting requirements under the JOBS program and other Federal education and job training programs:

- Use of birth date rather than age at application;
- Use of the term "dependents" rather than participant's children;
- Elimination of categorical educational attainment groups and use of highest grade level completed;
- Elimination of categorical grouping (below 7th grade) and use of assessed grade level equivalents or standardized test raw scores in basic skills;
- Conforming the definition of "long-term AFDC recipient" to correspond with the JOBS program definition of this target group; and
- Conforming the reporting of hours in training to more closely correspond to the method used in the JOBS program to track actual hours of attendance.

Recent enactment of the JTPA amendments now requires:

- Participants in programs funded by title I, section 124 (Training Programs for Older Individuals) to be included in this reporting system so that new mandatory performance standards can be developed.
- Clarification of the program participation definition, to conform to the Amendments, that distinguishes between intake activity and objective assessment, which is the first activity taking place after enrollment in the program. Because section 204(b)(1) of the amended JTPA classifies assessment as a "direct training service", individuals who receive assessment will be reported as participants. This is consistent in concept with the current JASR definition of "participant" as an individual who has "started receiving employment, training or services * * * funded under the Act, following intake."

• Distinguishing between in-school and out-of-school youth to correspond to differing programming and funding requirements.

• Identifying job placements that provide fringe benefits to reflect newly revised incentive award criteria.

Two items have been added affecting reporting on female participants to satisfy the reporting requirements of the NEW legislation:

- Whether the job placement was in a registered apprenticeship program; and
- Whether the job is determined by the SDA/SSA to be "non-traditional employment" for women.

Other Changes

The following clarifications have been made in response to comments received:

- The definitions of concurrent participation and supportive services have been clarified.
- The definition of economically disadvantaged has been corrected to parallel the law and specifically include the homeless.
- Public assistance receipt is restricted to those participants listed on the grant and excludes foster child payments. Public assistance information is to be collected for both title IIA and III.
- Elimination of the categorical grouping of "long-term unemployed" and replacing it with actual weeks of unemployment—a more precise measure.
- Preprogram wage is now collected for both title IIA and title III participants. Wage at dislocation continues to be collected for title III participants only.
- A substance abuse barrier to employment has been added to conform with current reporting of multiple barriers to employment.

Paperwork Reduction Act of 1980

The Appendix in this notice has been reviewed in accordance with The Paperwork Reduction Act by the Office of Management and Budget and approved through the period ending June 1995. This report has been assigned OMB Control No. 1205-0321.

ETA estimates that it will take an average of 20,140 additional hours to perform this reporting including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Comments regarding these estimates or any other aspect of this reporting system, including suggestions for reducing burden, should be sent to the Office of Information Management, U.S. Department of Labor, room N-1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Signed at Washington, DC, this 5th day of November 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Standardized Program Information Record (SPIR) Format

Section I. Identification/Characteristics of Applicant

1. State/SDA/SSA name.
2. ETA assigned SDA/SSA code.
3. Applicant Social Security number.

4. Date of application (MM/DD/YY).
5. Date of birth: (MM/DD/YY).
6. Gender:
 - ¹ Male
 - ² Female
7. Race/ethnicity:
 - ¹ White (Not Hispanic)
 - ² Black (Not Hispanic)
 - ³ Hispanic
 - ⁴ American Indian or Alaskan Native (Not Hispanic)
 - ⁵ Asian or Pacific Islander (Not Hispanic)
8. Individual with a disability ¹ Yes ² No.
9. Date of eligibility determination (MM/DD/YY).
10. Determined eligible for:
 - ¹ Title II-A
 - ² Title I Section 124 (older workers)
 - ³ Title II-C (after PY 1992)
 - ⁴ Title III (Governor's reserve, substate recipient, or national reserve)
 - ⁵ None

Section II. Characteristics of Participant

11. Date of participation (MM/DD/YY).
12. Title of participation:
 - ¹ Title II-A
 - ² Title I Section 124 (older workers)
 - ³ Title II-C
 - ⁴ Title III Governor's reserve
 - ⁵ Title III substate grantee
 - ⁶ Title III national reserve
- 12a. Concurrent participation:
 - ¹ Yes, JTPA
 - ² Yes, non-JTPA
 - ³ Yes, both
 - ⁴ No
13. Economically disadvantaged (Title IIA only): ¹ Yes ² No.
14. Public assistance recipient
 - 14a. Receiving AFDC: ¹ Yes ² No.
 - 14b. Receiving general assistance: ¹ Yes ² No.
 - 14c. Receiving refugee cash assistance: ¹ Yes ² No.
 - 14d. Receiving SSI: ¹ Yes ² No.
 - 14e. Receiving food stamps: ¹ Yes ² No.
15. Family Status:
 - ¹ Parent in one-parent family
 - ² Parent in two-parent family
 - ³ Other family member
 - ⁴ Not a family member
16. Number of participant's dependents, under age 18:
17. Highest school grade completed: (00).

17a. Indicate if currently enrolled and attending school: ¹ Yes ² No.

17b. If Item 17a. is Yes, indicate if currently enrolled and attending school full-time: ¹ Yes ² No.

18. Veteran: ¹ Yes ² No.
- 18a. Vietnam era veteran: ¹ Yes ² No.
- 18b. Disabled veteran: ¹ Yes ² No.
19. Labor force status:
 - ¹ Employed
 - ² Unemployed
 - ³ Not in labor force
20. Number of weeks unemployed during the prior 26 weeks:
21. Unemployed compensation status:
 - ¹ Claimant
 - ² Exhaustee
 - ³ No
22. Preprogram wage (Title IIA and III): (\$0.00).
- 22a. For Title III, indicate the hourly wage of the job of dislocation. (\$0.00).
23. Record *either the* Reading skills grade level: *or the* Reading skills raw test score: (00)
- 23a. If a raw score is reported in Item 23., record the code for the test used and, if applicable, the form used.
24. Record *either the* Math skills grade level: *or the* Math skills raw test score: (00)
- 24a. If a raw score is reported in Item 24., record the code for the test used and, if applicable the form used.
25. JOBS program participant ¹ Yes ² No.
26. Additional barriers to employment (indicate all that apply):
 - 26a. Limited English language proficiency ¹ Yes ² No.
 - 26b. Offender ¹ Yes ² No.
 - 26c. Displaced homemaker ¹ Yes ² No.
 - 26d. Homeless ¹ Yes ² No.
 - 26e. Lacks significant work history ¹ Yes ² No.
 - 26f. Long-term AFDC recipient ¹ Yes ² No.
 - 26g. Pregnant or parenting teen ¹ Yes ² No.
 - 26h. Substance Abuse ¹ Yes ² No.
 - 26i. Other SDA-identified barrier ¹ Yes ² No.

Section III. Activity and Services Record

Training activities for which *actual* hours must be recorded:

	Total actual hours	Completed
Basics skills training.....	27a. _____	28a. ¹ Yes ² No.
Occupational skills training (non-OJT).....	27b. _____	28b. ¹ Yes ² No.
On-the-job training.....	27c. _____	28c. ¹ Yes ² No.
Work experience/entry employment experience.....	27d. _____	28d. ¹ Yes ² No.
Other employment skills training.....	27e. _____	28e. ¹ Yes ² No.

29a. Date first received training: (MM/DD/YY).

29b. Date last received training: (MM/DD/YY).

Other services:

	Received
Job search assistance (Title IIA only).	30a. ¹ Yes ² No
Basic readjustment services (Title III only).	30b. ¹ Yes ² No

31. If occupational skills training, record the 9-digit DOT code, 5-digit OES code or 6-digit CIP code.

32. Indicate each type of support service received.

32a. Transportation ¹ Yes ² No.

32b. Health care ¹ Yes ² No.

32c. Family care ¹ Yes ² No.

32d. Housing or rental assistance ¹ Yes ² No.

32e. Counseling: personal, financial or legal ¹ Yes ² No.

32f. Needs-based/related payments ¹ Yes ² No.

32g. Other ¹ Yes ² No.

Section IV. Program Outcomes

33. Date of termination: (MM/DD/YY).

34. Entered unsubsidized employment: ¹ Yes ² No.

34a. If Item 34. is yes, indicate whether the individual entered a registered apprenticeship program: ¹ Yes ² No.

34b. For Title III only, if Item 34 is yes, indicate whether the individual relocated out of area: ¹ Yes ² No.

34c. For females only, if item 34 is yes, indicate whether the job is in an occupation considered by the SDA to be in non-traditional employment for women: ¹ Yes ² No.

35. Employment information

35a. Hours worked per week: (00).

35b. Hourly wage at termination: (\$0.00).

35c. Receives fringe benefits: ¹ Yes ² No.

35d. 9-digit DOT or 5-digit OES code that best describes the job at termination.

35e. State job is located in:

35f. Job covered by Unemployment Insurance system: ¹ Yes ² No.

36. Adult/Youth employability enhancement: ¹ Yes ² No.

If yes, indicate all that apply:

36a. Attained pre-employment/work maturity skills (youth only): ¹ Yes ² No.

36b. Returned to full-time school (youth only): ¹ Yes ² No.

36c. Remained in school (youth only): ¹ Yes ² No.

36d. Attained basic education skills: ¹ Yes ² No.

36e. Attained job specific/occupational skills: ¹ Yes ² No.

36f. Completed major level of education: ¹ Yes ² No.

36g. Entered non-Title II training: ¹ Yes ² No.

37. Transferred to other training programs (Title III only): ¹ Yes ² No.

38. Called back/remained with layoff employer (Title III only): ¹ Yes ² No.

39. If both Item 34. and Item 36. are no, indicate which other termination best applies:

¹ Institutionalized

² Health/Medical

³ Family care

⁴ Lacks transportation

⁵ Cannot locate

⁶ Voluntary, other

⁷ Involuntary, other

Section V. Follow-Up Information

40. Contacted:

¹ Yes

² In sample, but not contacted

³ Not in sample

41. Employed at follow-up: ¹ Yes ² No.

If yes:

41a. Hourly wage: (\$0.00).

41b. Hours worked per week: (00).

41c. Employed with same employer as at termination: ¹ Yes ² No.

42. Number of weeks worked in follow-up period.

Standardized Program Information Report (SPIR) Format Instructions and Definitions

General Instructions

The Governor will collect and maintain a core set of socio-economic, program participation and outcome information on each applicant/participant in programs funded under title I-section 124, IIA (78% and 6% incentives), and III of the Job Training Partnership Act (JTPA) and transmit this information for participants who have terminated from the programs.

Note: Upon implementation of the Job Training Reform Amendments, affected titles will be IIA, IIC and III.

The following instructions describe the format that will be used to maintain applicant and participant information and to transmit the terminnee information each year. Initially transmission will be on magnetic tape or equivalent. Facilities, however, for direct electronic transmission will be developed as soon as feasible.

During Program Year 1992 (July 1, 1992-June 30, 1993) participant records for all those terminating during the program year will be reported no later than 135 days after completion of the program year.

After Program Year 1992 participant data will be reported by one of two dates:

1. By August 15 records that are complete in all respects except for follow-up information must be reported on *all* participants who have terminated during the program year.

2. By November 15 any missing or incomplete records not previously submitted, including appropriate follow-up information, must be reported.

Due to the lateness of this issuance and to anticipated implementation difficulties, DOL requests submission of completed records to the extent feasible. Incomplete records will be accepted under certain circumstances for the first year of operation, PY 1992. Items that are not currently collected in the JASR or WAPR do not have to be reported during PY 1992. Further, if data collection on new items is started voluntarily during PY 1992, the information need not be collected retroactively for participants already in the program and past the point when it would normally be determined. Therefore, records on each participant terminating during FY 1992 must only contain all the items currently reported on the JASR or WAPR. It is expected, however, that sufficient progress will be made at incorporating the new items so that complete information will be available for all participants terminating during PY 1993, even if they are enrolled in PY 1992 and carried-over. The Department and its technical assistance contractor will request information on

current capabilities and offer assistance in implementation.

The data items to be submitted in this system and their associated definitions are designed to provide information about program application and participation. Though efforts have been made to make definitions consistent with those used for other purposes, these definitions are not required to be used for program eligibility determination nor do they, in any way, reduce the Governor's authority to establish certain definitions that affect program eligibility.

Beginning on the effective date of this reporting system, Items 1 through 9 are to be collected and retained for all applicants (eligible and ineligible) to title IIA, I-section 124 (Older Workers), IIC (after PY 1992) and III of the JTPA program. These records must be retained for a period of time that is consistent with requirements issued by the Directorate of Civil Rights. For applicants who do not become participants these data may be maintained as hard copy (paper) records.

Items 1 through 42, as appropriate, are to be collected and reported for all eligible applicants who become participants under these titles.

Note: A separate SPIR submittal is required for EACH JTPA title/subprogram of participation, as indicated below:

Title IIA

Title I section 124 (Older workers)

Title IIC (after PY 1992)

Title III Governor's Reserve

Title III Substate recipient

Title III National Reserve

Applicants in the following programs are to be excluded from the SPIR:

Title I Section 123 (education coordination)

Title IIB

Defense Conversion Adjustment Program (DCAP)

Clean Air Employment Transition Assistance (CAETA) Program

Description of Format for Reporting Standardized Program Information

Section I. Identification/Characteristics of Applicant

1. *State/SDA/SSA name.* Record the name of the State and or SDA/SSA reporting this record.

2. *ETA assigned SDA/SSA code.* Record the ETA assigned SDA/SSA number of the area.

3. *Applicant Social Security number.* Record the applicant's Social Security account number.

4. *Date of application.* Record the date on which the individual applied for this entry into the JTPA program.

5. *Date of birth.* Record the date of birth of the individual.

6. *Gender.* Record the code for male or female.

7. *Race/ethnicity.* Record one designation of the participant's race/ethnic group from among the following categories.

¹ *White (not Hispanic).* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

² *Black (not Hispanic).* A person having origins in any of the black racial groups of Africa.

³ *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

Note: Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portuguese should be excluded from the Hispanic category and should be classified according to their race.

⁴ *American Indian or Alaskan Native (Not Hispanic).* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

⁵ *Asian or Pacific Islander (Not Hispanic).* A person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

8. *Individual with a disability.* An individual who has a physical (motion, vision, hearing) or mental (learning or developmental) impairment which substantially limits one or more of such person's major life activities; has a record of such an impairment; or is regarded as having such an impairment.

9. *Date of eligibility determination.* Record the date on which the individual was determined eligible for the JTPA program.

10. *Determined eligible for.* Record the appropriate code(s).

Section II. Characteristics of Participant

11. *Date of participation.* Record the date on which the individual began to receive JTPA funded program services after initial screening for eligibility and suitability. Objective assessment to

determine service strategy or employment goals must occur *after* the date of participation and is considered an initial program service. Objective assessment is an independent evaluation of the capabilities, needs, and vocational potential of a participant.

12. *Title of participation.* Record the appropriate code.

12a. *Concurrent participation.* Indicate if the individual's service strategy results in concurrent participation in more than one program/title within JTPA or, in non-JTPA programs, or both. Do not include multiple activities in a single program or title.

13. *Economically disadvantaged.* For title II-A only, indicate yes if the participant:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, State or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six-month period prior to application, in relation to family size and location, that did not exceed either:

(a) The official poverty line as defined by the Department of Health and Human Services (HHS) and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)); or

(b) 70 percent of the lower living standard income level, whichever is greater.

(3) Is receiving, or has been determined eligible to receive in the 6-months prior to application, Food Stamps pursuant to the Food Stamp Act of 1977;

(4) Qualifies as a homeless individual under (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act;

(5) Is a foster child on behalf of whom state or local government payments are made;

(6) Is an individual with a disability who meets the requirements of (1) or (2) above, but who is a member of a family which does not meet such requirements.

14. *Public assistance recipient.* For title II-A and III, indicate whether the participant is listed on the grant for any of the following programs. When not used for eligibility determination, self-reported information will be accepted. Do not include foster child payments.

14a. Aid to Families with Dependent Children (AFDC).

14b. General assistance.

14c. Refugee cash assistance.

14d. Supplemental Security Income (SSA title XVI).

14e. Food stamps (Food Stamp Act of 1977).

15. *Family status.* Record one designation describing the participant's family status from among the following categories. (The following categories of family status are meant to be descriptive and do not necessarily have a direct bearing on eligibility determination. There may be specific cases that do not technically fit into a single category. For these cases record the designation that seems most appropriate.)

¹ *Parent in one-parent family.* An individual who has sole custodial support for one or more dependent children.

² *Parent in two-parent family.* An individual who, with another family member, shares custodial support for one or more dependent children.

³ *Other family member.* An individual who is living with his/her family of two or more persons and not indicated in ¹ or ² above.

⁴ *Not a family member.* An individual who is not living with his/her family.

16. *Number of participant's dependents, under age 18.* Record the number of the participant's dependents under age 18.

17. *Highest school grade completed.* Enter the highest school grade completed by the individual, using the following codes:

00 No educational grades completed

01-11 Number of elementary or secondary grade completed

12 High school graduate or equivalent

13-15 If a high school graduate or equivalent, the number of school years completed including college, or full-time technical or vocational school

16 Bachelor's degree or equivalent

17 Fifth year of college, Master's degree or equivalent

18 Sixth year or more of college, Master's degree, Ph.D or equivalent

17a. *Currently enrolled and attending school.* Record whether the participant is currently enrolled in and attending school or is between school terms and intends to return to school.

17b. *Full-time.* If Item 17a. is Yes, record whether the participant is currently enrolled in and attending school full-time as defined by State educational agency guidelines.

18. *Veteran status.* Record whether the participant is a person who (A) served on active duty in the military service (of the U.S.) for a period of more than 180 days and who was discharged or released with other than a

dishonorable discharge or (B) was discharged or released from active duty because of a service-connected disability or (C) was discharged as a member of a reserve component under an order to active duty pursuant to section 672 (a), (d), or (g), 673, or 673b of title 10, who served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged from such duty with other than a dishonorable discharge. (38 U.S.C. 2011(4))

18a. *Vietnam era veteran.* Record whether the participant is a veteran, any part of whose active military, naval or air service occurred between August 5, 1964 and May 7, 1975.

18b. *Disabled veteran.* Record whether the participant is a veteran who is entitled to compensation for a disability under laws administered by the Department of Veterans' Affairs, or who was discharged or released from active duty because of a service-connected disability.

19. *Labor force status.* Record, at the time of application, which of the following classifications best describes the individual's labor force status.

¹ *Employed.* An employed individual is one who, during the 7 consecutive days prior to application, did any work at all as a paid employee, in his or her own business, profession or farm, worked 15 hours or more as an unpaid worker in an enterprise operated by a member of the family, or is one who was not working, but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time-off, and whether or not seeking another job.

² *Unemployed.* An unemployed individual is one who did not work during the 7 consecutive days prior to application, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application. Also included as unemployed are those who did not work, and (a) were waiting to be called back to a job from which they had been laid off, or (b) were waiting to report to a new wage or salary job scheduled to start within 90 days.

³ *Not in labor force.* An individual not in the labor force is a civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed.

20. *Number of weeks unemployed during the prior 26 weeks.* Record the number of weeks an individual was

unemployed during the 26 weeks immediately prior to eligibility determination (refer to definition in Item 19). Record this information whether or not the individual is unemployed at the time of application.

21. *Unemployment compensation status.* Record the individual's U.C. Status in one of the following categories:

¹ *Eligible claimant.* Record whether the individual has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit period has not ended.

² *U.C. exhaustee.* Record whether the individual has exhausted all U.C. benefit rights for which the applicant has been determined monetarily eligible, including extended supplemental benefit rights.

³ *None.*

22. *Preprogram wage.* For title II-A and title III participants, record the most recent hourly wage paid to the participant during the 26 weeks prior to application. Record "0" if no employment during that period.

22a. *Wage at dislocation.* For title III participants, also record the hourly wage paid to the participant in the job from which the person was dislocated regardless of when it occurred.

23. *Reading skills grade level.* Indicate either: The grade level equivalent in English reading at which the individual is functioning at program entry as determined by a generally accepted standardized test (administered within the last 12 months) or a school record of reading level in English (determined the last 12 months); or the raw score in reading on a generally accepted standardized or criterion-referenced test.

23a. If a raw score is reported in 23., record the code for the test administered and, if applicable, the form used:

¹ Adult Basic Learning Examination (ABLE)

² Adult Literacy Test (ALT) JTPA/ES

³ Adult Literacy Test (ALT) Simon & Schuster

⁴ Armed Forces Qualifying Test (AFQT)

⁵ Basic Occupational Literacy Test (BOLT)

⁶ California Achievement Test (CAT)

⁷ Career Ability Placement Survey (CAPS)

⁸ CASAS Appraisal

⁹ CASAS Survey Achievement Tests

¹⁰ General Aptitude Test Battery (GATS)

¹¹ Iowa Test of Basic Skills (ITBS)

¹² Metropolitan Achievement Test

(MAT)

¹³ Reading Job Corps Screening Test (RJ CST)

¹⁴ Tests of Adult Basic Education (TABE)

¹⁵ Wide Range Achievement Test (WRAT)

¹⁶ Other

24. *Math skills grade level.* Indicate either: The grade level equivalent in math (also called quantitative or computational skills) at which the individual is functioning at program entry as determined by a generally accepted standardized test or a comparable score on a criterion-referenced test (administered within the last 12 months) or a school record of math skills level (determined within the last 12 months), or the raw score in math skills on a generally accepted standardized or criterion-referenced test.

24a. If a raw score is reported in 24., record the code for the test administered (Use codes listed in Item 23a.) and, if applicable, the form used.

25. *JOBS program participant.* Any individual (AFDC client) who is a participant (or has been a participant within the prior six months) in assessment or employability planning, or is assigned to one of the JOBS program components defined in the approved State JOBS program plan, including self-initiating activities, at the time of eligibility determination for JTPA title II-A.

26. *Additional barriers to employment.* The individual should be recorded in as many of the following groups as applicable.

26a. *Limited English language proficiency.* The inability of an individual, whose native language is not English, to communicate in English, resulting in a barrier to employment.

26b. *Offender.* Any adult or youth who requires assistance in overcoming barriers to employment resulting from a record of street or conviction (excluding misdemeanors). This definition may be subject to change pending future regulations.

26c. *Displaced homemaker.* An individual who has been providing unpaid services to family members in the home and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment and who has been dependent either:

(i) On public assistance and whose youngest child is within 2 years of losing eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) On the income of another family member but is no longer supported by that income.

26d. *Homeless.* An adult or youth who lacks a fixed, regular, adequate nighttime residence; and any adult or youth who has a primary nighttime residence that is a public or private operated shelter for temporary accommodation; and institution providing temporary residence for individuals intended to be institutionalized; or a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings. The term does not include a person imprisoned or detained pursuant to an Act of Congress or State law.

26e. *Lacks significant work history.* An adult or youth who has not worked for the same employer for longer than three consecutive months in the two years prior to application.

26f. *Long-term AFDC recipient.* An adult or youth listed on the AFDC grant who has received cash payments under AFDC (SSA title IV) for any 36 or more of the 60 months prior to application. The individual may or may not be receiving AFDC payments at the time of application.

26g. *Pregnant or parenting teen.* An individual who is under 20 years of age and who is pregnant, or a male or female who is providing custodial care for one or more dependents under age 18.

26h. *Substance abuse.* An individual who abuses alcohol or other drugs, as defined by the Governor.

26i. *Other SDA-identified barrier.* An individual who meets the criteria of an additional category of individuals who face serious barriers to employment, as defined by the service delivery area. This other SDA-identified barrier must be approved for inclusion by the Governor, not be identified in Items 26a. through 26h. above, and not be solely related to unemployment status or work history.

Section III. Activity and Service Record

This section provides a record of the type and amount of training a participant receives while enrolled in the program. Training activity categories are divided into two groups that are recorded differently. Actual hours of participation and an indication of completion are required for those activity types that are usually planned and scheduled. For other activities that are usually provided on an irregular, unscheduled basis, it is only necessary to record an indication of receipt.

Training Activities for Which Actual Hours Must be Recorded

For each of the following training activity categories, record the total actual hours participated in all activities in that category and whether or not any of them were completed. Include those activities partially or completely funded by non-JTPA sources that were included in the participant's JTPA service strategy.

27. *Total actual hours* is the total number of hours that the participant is engaged in all training activities within each category. Use the actual hours recorded by the vendor or program administrator. If activities from different categories are integrated into a single program, distribute actual hours between the categories in a way that reflects the composition of the integrated program.

28. Indicate whether any activity in the category was completed. An activity is completed if the individual achieves the activity's goal.

The training activity categories for which actual hours must be recorded are:

a. *Basic skills training:* Instruction normally conducted in an institutional setting and designed to upgrade basic skills and prepare the individual for further training, future employment, or retention in present employment. Includes remedial reading, writing, mathematics, literacy training, study skills, English for non-English speakers, bilingual training, GED preparation (including computer assisted instruction) and basic skills youth employment competency training, school to post-secondary education transition.

b. *Occupational skills training (non-OJT):* Instruction conducted in an institutional or worksite setting designed to provide or upgrade individuals with the technical skills and information required to perform a specific job or group of jobs such as auto mechanics, health services, or clerical training. Includes job-specific competency training, job-specific school-to-work/apprenticeship programs, on-site industry specific training, customized training, entrepreneurial training, internships and preapprenticeship training.

c. *On-the-Job Training (OJT):* Training in the public or private sector which is given to an individual while s/he is engaged in productive work, and which provides knowledge or skills essential to the full and adequate performance of the job.

d. *Work experience/entry employment experience/private internships:*

Work experience is a short-term or part-time work activity in the public or not-for-profit sector which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors.

For youth only, entry employment experience or private internships is a formal opportunity to examine or investigate employment typically at private, for-profit worksites.

e. *Other employment skills training:*

Includes activities such as pre-employment/work maturity training, and non-job-specific school-to-work/postsecondary programs (does not include job search assistance, basic readjustment services).

29a. *Date First Received Training.* Record the date, following objective assessment, on which the participant first received or participated in any training activity listed in 28a. through 28e.

29b. *Date Last Received Training.* Record the date on which the participant last received or participated in any training activity listed above.

In addition to the training activities above, indicate which of the following services the participant received.

30. Record whether services in the following categories were received, but not the number of hours participated or whether they were completed.

a. *Job search assistance:* (Title IIA only) A service that helps a participant seek, locate, apply for and obtain a job. It may include job-finding skills, orientation to the labor market, resume preparation assistance, job development, referrals to job openings, job clubs, vocational exploration and relocation assistance.

b. *Basic readjustment services:* (Title III only) Includes services designed to provide basic readjustment assistance such as orientation, skills determination, pre-layoff assistance, job development/referral assistance, and job search to eligible dislocated workers.

31. *Occupational skills training code.* If the participant received any non-classroom training for a specific occupation, record the 9-digit DOT code or 5-digit OES code that best describes that occupation. If the participant received classroom occupational skills training, either of these or the 6-digit CIP code that best describes the training should be recorded. If training was provided for more than one occupation record the code for the last significant occupational training.

32. *Indicate each supportive service received.* The term "supportive services" means services arranged for, but not necessarily funded under JTPA, which enable an individual eligible for training under JTPA, but who cannot afford to pay for such services, to participate in a training program funded under the Act. Only record supportive services received while an individual is a participant. An exception is noted in Item 32g.

32a. *Transportation.* A supportive service for participants to ensure mobility between home and the location of employment, training and/or other supportive services.

32b. *Health care.* Includes, but is not limited to, preventive and clinical medical treatment, voluntary family planning services, and necessary psychiatric, psychological and prosthetic services.

32c. *Family care.* A service or support which helps participants meet their family care needs during participation. Family care ranges from day care outside the home or in-house to after-school programs (outside the home or in-house). It usually includes supervision and shelter, and may include subsistence and transportation.

32d. *Housing or rental assistance.* A supportive service which assists participants in maintaining or obtaining adequate shelter for themselves and their families while they are receiving employment, training or other supportive services.

32e. *Counseling: personal, financial, or legal.* The process of assisting participants with the solution of a variety of personal, financial or legal problems occurring during participation.

32f. *Needs-based/related payments.* In title IIA, amounts derived from a locally-developed formula or procedure which are paid to participants who could not afford to otherwise participate in a training program.

In title III, payments to an eligible dislocated worker who does not qualify or has ceased to qualify for unemployment compensation, in order to enable such worker to complete training or education programs funded under title III. To be eligible for such payments, individuals who have exhausted their unemployment compensation, must have been enrolled in training by the end of the 13th week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after an employee is informed that a short-term layoff will, in fact, exceed six months.

32g. *Other.* Any supportive service(s), not included above provided to eligible

individuals to enable them to participate in planned activities.

Note: Include here individuals who had received a Pell or TRA grant within 12 months prior to initial participation in the JTPA program and for whom the grant coverage continues after participation in JTPA begins.

Section IV. Program Outcomes

33. *Date of termination.* Record the date at which an individual is no longer receiving employment, training or services (except post-termination services) funded under that title.

Note: Individuals may be considered participants for a single period of up to 90 days of inactive status after last receipt of employment or training funded under a given title. During this 90 day period individuals may or may not receive services, however, at a minimum, programs should remain in contact with participants. (If the participant received "services only" while in title IIA, this period of inactive status cannot exceed 30 days.)

34. *Entered unsubsidized employment:* Indicate whether or not the terminee entered full or part-time employment not financed by funds provided under the Act, including entry into the Armed Forces, entry into employment in a registered apprenticeship program, and self-employment.

34a. If Item 34. is Yes, indicate whether the individual entered a registered apprenticeship program; i.e., a program approved and recorded by the ETA/Bureau of Apprenticeship and Training or by a recognized State Apprenticeship Agency. Approval is by certified registration or other appropriate written credential.

34b. For Title III only, if Item 34. is yes, indicate if the individual has met the following:

(a) Terminated from Retraining,
(b) received relocation assistance, and
(c) relocated outside the Substate Area which provided such relocation assistance, or if the individual was relocated (within or outside of the State), if this assistance was provided by a Statewide SSA or by a program administered by the Governor.

34c. For females only, if Item 34. is yes, indicate whether the job is in an occupation in non-traditional employment for women in accordance with the Nontraditional Employment for Women (NEW) Act.

35. *Employment information.* For Items a. through e., record information only for those individuals who entered unsubsidized employment at termination (Yes in item 34.)

35a. Record the usual number of hours of work scheduled per week.

35b. Record the hourly wage at termination. Hourly wage includes any bonuses, tips, gratuities and commissions and overtime pay earned.

35c. Indicate whether the employment provides the individual with fringe benefits consisting of, at a minimum, health insurance benefits and coverage under Social security or an equivalent pension plan.

35d. Determine the 9-digit DOT code or 5-digit OES code most appropriate for the job.

35e. Indicate the State where the job is located.

35f. Indicate whether the job is covered by the Unemployment Insurance system.

36. *Adult/youth employability enhancement:* Record whether or not the terminée obtained one or more outcomes, other than entered unsubsidized employment, which are recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment.

If yes, indicate all that apply:

36a. *Attained pre-employment/work maturity skills (youth only):* A youth who, prior to termination, had attained preemployment/work maturity skills.

Pre-employment skills: World-of-work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning and decision-making, and job search techniques (resumes, interviews, applications, and follow-up letters). They also encompass survival/daily living skills such as using the phone, telling time, shopping, renting an apartment, opening a bank account, and using public transportation and

Work maturity skills: Positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibilities involved in maintaining a job. This category also entails developing motivation and adaptability, obtaining effective coping and problem-solving skills, and acquiring an improved self-image.

36b. *Returned to full-time school (youth only):*

A youth who, (1) had returned to full-time secondary school (e.g., junior high school, middle school and high school), including alternative school, if, at the time of intake the participant was not attending school, exclusive of summer,

and had not obtained a high school diploma or equivalent and (2) prior to termination had been retained in school for one semester or at least 120 calendar days.

36c. *Remained in school (youth only):*

A youth who, prior to termination, had been retained in a full-time secondary school, including alternative school, for one semester or at least 120 calendar days. The youth must be attending school at the time of intake, have not obtained a high school diploma or equivalent, and be considered "at risk of dropping out of school" as defined by the Governor in consultation with the State Education Agency.

Note for Items 36b. and 36c.: To obtain credit for *Returned to Full-Time School OR Remained in School*, SDAs must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities and the youth must

(1) Be making satisfactory progress in school, and

(2) For youth aged 16-21: Attain a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills and

(3) For individuals aged 14-15: attain a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

36d. *Attained basic education skills (adult and youth):*

An adult or youth who, prior to termination, had obtained basic educational skills. These skills include reading comprehension, math computation, writing, speaking, listening, problem-solving, reasoning, and the capacity to use these skills in the workplace.

36e. *Attained job-specific occupational skills (adult and youth):*

An adult or youth who, prior to termination, had attained job specific occupational skills. These skills are: primary job-specific occupational skills which encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels. Secondary job-specific occupational skills entail familiarity with and use of set-up procedures, safety measures, work-related terminology, recordkeeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

36f. *Completed major level of education:*

An adult or youth who, prior to termination, had completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards

shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level.

Note: Completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days or 200 hours, usually prior to such completion.

36g. *Entered non-Title II training:*

An adult or youth who, prior to termination, had entered an occupational-skills employment/training program, not funded under title II of the JTPA, which builds upon and does not duplicate training received under title II.

Note: The participant must have been retained in that program for at least 90 calendar days or 200 hours or must have received a certification of occupational skill attainment. During the period the participant is in non-title II training, s/he may or may not have received JTPA title IIA services. Include here intertitle transfer terminees, such as to title I, Section 123, 8% programs.

37. For title III participants, indicate whether, at termination, the participant had entered another occupational skills program as a result of being transferred to a program operated by another SSA under JTPA title III, a program funded under another JTPA title, or a program not funded by JTPA.

38. For title III participants, indicate whether the participant was called back or remained with the layoff employer.

39. *Other terminations:* If the entries for Items 34. and 36. above are no, indicate which one of the following other terminations best applies. (There must be a response to this item if both Items 34. and 36. are answered no.)

1. *Institutionalized.* The participant is residing in an institution or facility providing 24-hour support such as a prison or hospital.

2. *Health/medical.* The participant is receiving medical treatment which precludes entry into unsubsidized employment or continued participation in the JTPA program.

3. *Family care.* The participant is responsible for the care of one or more family members which precludes entry into unsubsidized employment or continued participation in the JTPA program.

4. *Lacks transportation.* The participant is without his/her own means of mobility, is unable to arrange for private transportation, or has no public transportation between home and the location of employment/training and/or other supportive services.

5. *Cannot locate.* The participant cannot be located after utilizing the

address/phone number provided by the participant and alternative contact information provided by the participant.

6. *Voluntary, other.* The participant voluntarily left the JTPA program for reasons other than those above.

7. *Involuntary, other.* The participant was separated from the program for administrative reasons other than those above. Include participants transferred to a program operated by another SDA under JTPA title IIA.

Section V. Follow-up Information

Record follow-up information for terminees contacted 13 weeks after termination. If sampling is used, it must be chosen and used according to instructions in the JASR and the WAPR.

40. Indicate whether the terminnee was in the sample, and, if so, whether s/he was successfully contacted or not.

41. Indicate whether the former participant was employed at follow-up (13th week after termination).

If employed:

41a. Record the hourly wage. Hourly wage includes any bonuses, tips, gratuities and commissions and overtime pay earned.

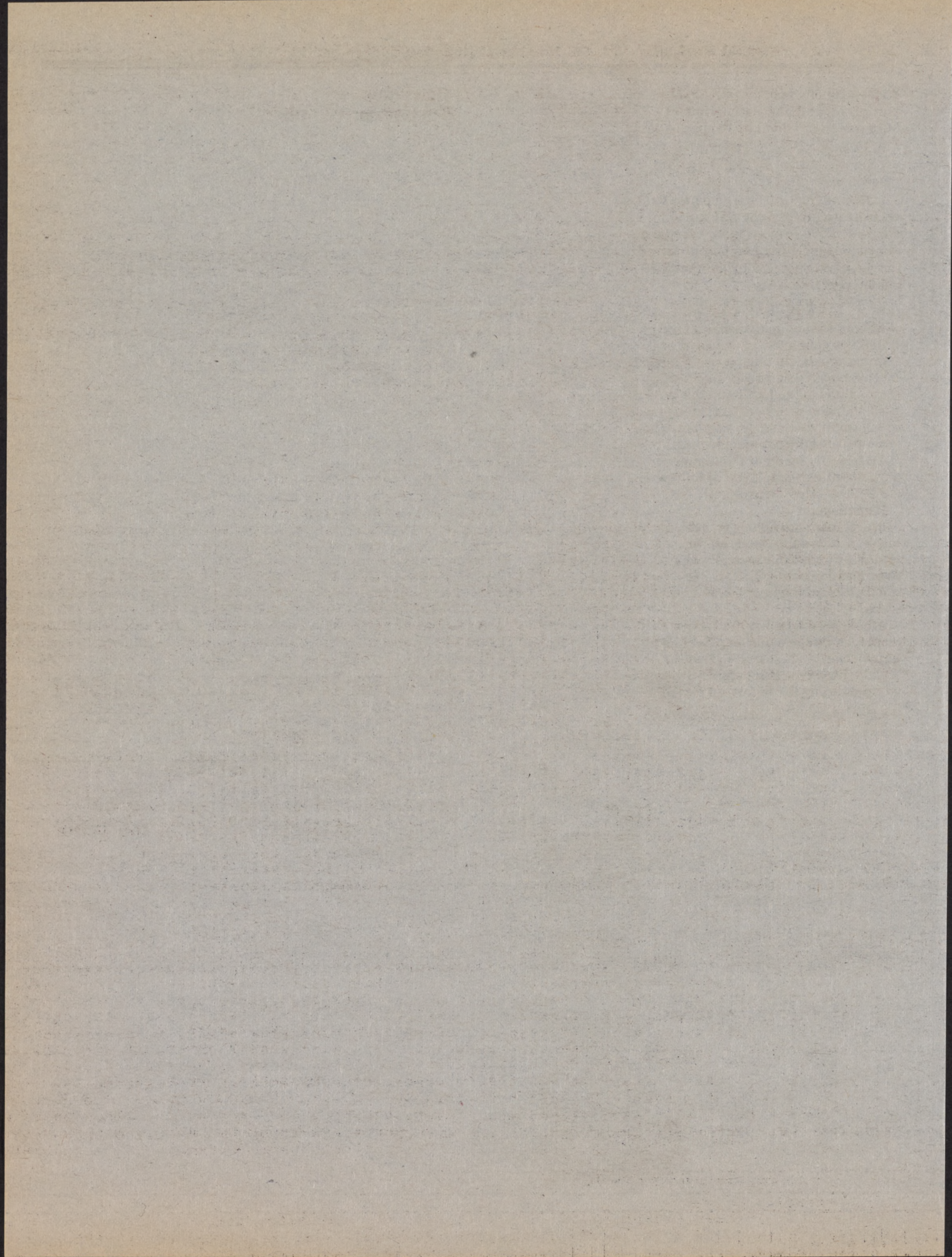
41b. Record the hours worked that week.

41c. Record whether the s/he is employed by the same employer as at termination.

42. Record the total number of weeks worked during the follow-up period.

[FR Doc. 92-27397 Filed 11-10-92; 8:45 am]

BILLING CODE 4510-30-M



தமிழக அரசு

Department of Labor

**Women's Bureau: Amended
Announcement of Public Hearings on
Concerns of Midlife Women in the Labor
Force; Notice**

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau: Amended Announcement of Public Hearings on Concerns of Midlife Women in the Labor Force

AGENCY: Office of the Secretary, Women's Bureau, Labor.

ACTION: Amended Announcement reflects change in location for Denver, CO hearing, location for Los Angeles, CA hearing and revised date to submit written notice of intent to present oral statements at the Denver and Los Angeles hearings.

SUMMARY: The Women's Bureau (WB) of the Department of Labor is reannouncing four public hearings to be held to provide interested parties opportunities to present oral or written views to WB on employment issues and/or concerns related to midlife women. The original announcement of these public hearings appeared in the *Federal Register* on Oct. 22, 1992 at 57 FR 48298.

DATES: The dates of the four public hearings are as follows: November 17, 1992: Atlanta, GA., November 19, 1992: Chicago, IL., December 2, 1992: Denver, CO., December 4, 1992: Los Angeles, CA.

Persons desiring to present oral statements at the Atlanta and/or Chicago hearings had to provide the WB a notice of intent to appear, postmarked on or before November 6, 1992. Persons desiring to present oral statements at the Denver and/or Los Angeles hearings must provide the WB a notice of intent to appear, postmarked on or before November 17, 1992.

Written statements from persons not presenting oral statements must be postmarked on or before December 11, 1992.

ADDRESSES: The hearings are open to the public. The locations of the public hearings are shown below.

Atlanta: Georgia State Capitol, 203 State Capitol, room 341, Atlanta, Georgia 30334.

Chicago: Metcalf Federal Building, 77 W. Jackson, 3rd Floor, room 331, Chicago, Illinois 60604.

Denver: Westin Hotel, Tabor Center, 1672 Lawrence Street, Lawrence Meeting Room, Denver, Colorado 80202.

Los Angeles: State Building Auditorium, room 1138, 107 South Broadway, Los Angeles, California 90012.

Notices of intent to present oral statements and written statements from persons not presenting oral statements should be mailed to: Ms. Sandra

Robinson, Midlife Project Coordinator, Women's Bureau, U.S. Department of Labor, room S3002, 200 Constitution Avenue, NW., Washington, DC 20210.

Persons planning to attend a public hearing should call the appropriate WB regional office at the telephone number listed below.

Atlanta: 404-347-4461

Chicago: 312-353-6985

Denver: 303-391-6756

Los Angeles: 415-744-6679

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra Robinson, Midlife Project Coordinator, Women's Bureau, U.S. Department of Labor, room S3002, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-6611.

SUPPLEMENTARY INFORMATION: During the past year the Women's Bureau has been studying the employment concerns of midlife women, those between the ages of 35 and 54. The purposes of this study are (1) to create an awareness of the concerns and needs of midlife women in the labor force or seeking to enter the labor force and (2) to delineate how the Women's Bureau can better serve midlife women in the labor force as they seek to improve their economic status.

The first stage of the research was comprised of roundtable discussions with selected groups of midlife women in 20 communities. These roundtable discussions were completed in June 1992. As a follow-up to the community meetings, the Women's Bureau will host four public hearings to provide an opportunity for interested parties to present orally, or to submit in writing to the Women's Bureau, their views on issues related to the labor force status of midlife women.

The Women's Bureau chose education, training and retraining as the broad topics to be addressed in the roundtable discussions. The issues identified for these public hearings are derived from some of the findings of those discussions. This *Federal Register* notice briefly discusses the issues and invites interested parties to present their views on the issues. Respondents are encouraged to present their views on other employment concerns of midlife women, such as pensions, compensation and benefits, work and family, etc., that may not be specifically addressed by this notice.

Background

In the 1990s, women at the midpoint of their working lives, those in the 35 to 54 age group, will play an increasingly important role in the work force. In 1991, midlife women accounted for 44 percent of the female labor force and are

projected to be almost half of the women in the labor force in 2005. By that year, women in their midlife years will have accounted for more than 70 percent of the net increase in the number of women in the labor force since 1991.

The ability to update skills and develop new ones is critical for economic success in an economy which is undergoing substantial change in terms of its labor requirements. Many women in this age group are returning to the labor force with outdated skills and need training; others are seeking paid employment for the first time. Many who have jobs are seeking career changes and/or are seeking promotional opportunities. Education, training and/or retraining are key factors in meeting their needs in developing new skills and/or upgrading the skills they have.

The roundtable discussions were held to gather information at the grass roots level which would provide a better understanding of the decisions women in their midlife years make about education and training, the success and/or failure of those decisions and why. In addition to midlife women, participants in the roundtables included public and private training program representatives, educators, government officials and others.

The finding of the community meetings which was most often reported was that midlife women, particularly new entrants and reentrants to the labor force, generally do not get reliable information and/or guidance on the education and training resources available. In addition, although education and training information is available from many sources, many of these women are unaware of these sources and others don't know how to use the information they receive.

The information obtained from these public hearings will be used to determine ways in which the Women's Bureau can respond to the concerns and needs of midlife women that were expressed. Also, because education and training issues are not isolated from other employment concerns, the opportunity is provided at the four hearings to present views on other issues related to midlife women and their labor force status.

Discussion

The information needs are different for women returning to the labor force or entering the paid labor force for the first time and for those career women who have been in the labor force for many years.

Entry and Reentry Midlife Women

One of the most difficult transitions facing midlife women is to return to the workplace after a long absence or to seek paid employment for the first time. Many of the entry and reentry women have no plans to enter or to return to the labor force but family economics, especially resulting from divorce or widowhood, make it necessary. Many women in their midlife years work intermittently, returning and withdrawing several times over their worklives. Others join the work force because they are simply seeking new roles and new interests. Most of these women need additional education and/or job training for updating old skills or learning new ones.

The recommendation made most often in the roundtables was that information about education and training opportunities and meaningful labor market information, be made available in a central location. Information about local and state public and private training programs, particularly those at community colleges, and other educational institutions as well as information about financial assistance should be readily available. Particularly important is accessible information about government funded programs that are available to midlife women who are above the income thresholds that make them ineligible for many programs. The Department of Labor's Job 2000 Training initiative provides for local Skill Centers but the job training information will be only on federal programs.

Issues

How can information systems be structured so that the needed information is readily available at central locations? What technologies can be put to better use in this regard? What needs to be done to ensure that reentrant and new entrants have the appropriate information to make informed training choices? What are the exemplary programs that specifically address the needs of midlife women? To what extent can replicable models be created from the best programs? What model programs are there for midlife women which are forward looking in terms of skills building for the 21st century? What strategies are needed to encourage midlife women to enter nontraditional or gender neutral occupations?

Career Women

Many midlife career women who were employed prior to midlife or in early

midlife years and have worked continuously need access to resources that will help upgrade their skills and/or to receive promotion. To do this, many women enter degree programs at midlife; some study for their first degree, some take graduate work, and others pursue studies to change careers. Many career women look first to their employers for employer-provided training information. However, according to the roundtable discussions, information about employer-provided training is not often easy to obtain. In addition, midlife women have difficulty in obtaining cross training and lateral moves to positions of responsibility, i.e., developmental assignments and grooming opportunities. Barriers to training opportunities which were frequently cited are age and sex discrimination.

Issues

How have midlife women tried to resolve these issues at the workplace? To what extent have they been able to sensitize employers to their concerns? What strategies have been successful? How can the benefits of hiring and promoting midlife women best be conveyed to employers?

Notice of Public Hearings

To explore fully the above issues and any other employment issues concerning midlife women which interested parties may wish to raise, the Women's Bureau is conducting a series of four public hearings.

Locations and Dates

The meeting dates are as follows:

November 17, 1992: Atlanta, GA
November 19, 1992: Chicago, IL
December 2, 1992: Denver, CO
December 4, 1992: Los Angeles, CA

The hearings will commence at 9:00 a.m. and adjourn at 6:00 p.m. There will be a one-hour break for lunch (noon-1:00 p.m.). The hearings are open to the public.

The locations of the public hearing are shown below:

Atlanta: Georgia State Capitol, 203 State Capitol, room 341, Atlanta, Georgia 30334.
Chicago: Metcalf Federal Building, 77 W. Jackson, 3rd Floor, room 331, Chicago, IL 60604.
Denver: Westin Hotel, Tabor Center, 1672 Lawrence Street, Lawrence Meeting Room, Denver, Colorado 80202.

Los Angeles: State Building Auditorium, Room 1138, 107 South Broadway, Los Angeles, California 90012.

Participation of Interested Parties

An opportunity to present oral statements concerning the issues raised above will be provided at these public hearings. Notices of intent to present oral statements, postmarked on or before November 6, 1992 (for the Atlanta and Chicago hearings), and postmarked on or before November 17, 1992 for the Denver and Los Angeles hearings, have to be mailed to the following: Ms. Sandra Robinson, Midlife Project Coordinator, Women's Bureau, U.S. Department of Labor, room S3002, 200 Constitution, Avenue, NW., Washington, DC 20210.

The notice of intent to present oral comments must contain the following information:

- (1) The name, address, and telephone number of each person to appear;
- (2) The capacity in which the person will appear;
- (3) The approximate amount of time required for the presentation; and
- (4) The issues that will be addressed.

This information is necessary to properly schedule persons presenting oral statements. The amount of time requested for each presentation will be reviewed in light of the number of persons or groups wishing to appear and will affect the time limitations of the hearings' schedules. In some cases, the time requested will be modified. To provide all interested parties an opportunity to present their views in public hearings, the WB may impose an appropriate time restriction for each presentation or limit presentations to only one person for an organization or interest group.

A videotape may be made of each hearing, and the proceedings may be transcribed.

Since this is a continuous series of hearings, material submitted at one hearing should not be submitted again at another site.

Hearing Procedures and Objectives

A Department of Labor official (or officials) will preside at each of the four hearings. The presiding official shall:

- (1) Regulate the course of the hearings, including the order of appearance of persons presenting oral statements;

(2) Dispose of procedural requests and comparable matters; and

(3) Confine the oral presentations to matters pertinent to the employment concerns of midlife women.

Signed at Washington, DC, this 5th days of November, 1992.

Elsie Vartanian,

Director, Women's Bureau

[FR Doc. 92-27396 Filed 11-10-92; 8:45 am]

BILLING CODE 4510-23-M

Thursday
November 12, 1992

Part VI

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Community Planning and Development

Community Development Work Study
Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3519; FR-3339-N-01]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice invites applications from institutions of higher education, area-wide planning organizations and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. This notice announces HUD's intention to award up to \$3 million (from FY 1993 appropriations (plus any additional recaptured from prior appropriations) to fund work study programs to be carried out from August, 1993 to September, 1995.

EFFECTIVE DATE: November 12, 1992.

FOR FURTHER INFORMATION CONTACT:

James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-3176. The TDD number is (202) 708-0564. These are not toll-free numbers. Application packages (requests for grant application) may be obtained by written request from the following address: Processing and Control Branch, Office of Community Planning and Development, Headquarter Department of Housing and Urban Development, Seventh Street, SW., room 7255, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community

or economic development, community planning, or community management. This notice announces HUD's intention to award up to \$3 million from FY 1993 appropriations (plus any additional funds recaptured from prior appropriations) Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program;
2. Institutions of higher education offering undergraduate degrees in a community development academic program if no institutions of higher education in the standard metropolitan statistical area (SMSA) or non-SMSA area in which they are located offer graduate degrees in a community development academic program;
3. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO;
4. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the SMSA or non-SMSA non-metropolitan area served by the APO are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the RFGA released pursuant to this notice.
2. The application must demonstrate that the applicant is eligible to participate;
3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP;
4. Institutions of higher education and area-wide planning organizations/States

must maintain at least a 50 percent rate of graduation of students from previous CDWSP-funded academic programs in order to participate in the next round of CDWSP funding. Institutions of higher education and Area-Wide Planning Organizations (APO's)/States funded under the FY 1990 CDWSP funding round which did not maintain such a rate will be excluded from participating in the FY 1993 funding round. Such institutions and APO's/States are eligible to participate in the 1994 round.

D. Selection Factors for Institutions of Higher Education (110 points)

The following factors will be considered by the Department in evaluating applications received from institutions of higher education in response to the solicitation.

1. Academic Program (53 points, as allocated below)

Each application will be reviewed for evidence of the school's commitment to administering a CDWSP and the overall strength of its commitment to meeting the needs of minority and economically disadvantaged individuals. This commitment will be evaluated in the following areas:

a. Relative quality of the academic program offered by the institution of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements for students; (8 points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8 points) and

(3) Qualifications of the faculty and the percentage of time they will teach in the academic area. (6 points)

b. Quality of academic supervision—Qualifications of the academic supervisor and the percentage of time they will commit to the students; (7 points)

c. Amount of resources to be committed by the institution to the academic program.

(1) Appropriateness and adequacy of the resources (facilities and equipment) that will be devoted to the academic area; (2 points)

(2) The degree to which the applicant is able to contribute funds to support the total cost of the project; (5 points) and

(3) The degree to which the applicant will utilize faculty and staff administrators on staff. (7 points)

d. Rate of graduation—Applicant's success rate in graduating students previously enrolled in the HUD CDWSP

or similar work study program. (10 points)

2. *Student Work Placement Assignment* (9 points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3 points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3 points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3 points)

3. *Seminars* (4 points, as allocated below)

The degree to which the proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic programs and will address career planning and permanent job placement. (4 points)

4. *Placement Opportunities* (13 points, as allocated below) #

a. Extent to which the institution's educational program (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields; (6 points) and

b. The applicant's success in assisting graduates of the HUD CDWSP or similar work study program to find permanent employment in community development funded agencies. (7 points)

5. *Program Coordination and Administration* (16 points, as allocated below)

a. The applicant's ability to track and monitor the progress of the students previously enrolled in the HUD or similar work study program, including the students who drop out of the program. (4 points)

b. The degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program. (8 points)

c. The adequacy of the applicant's plan for placing students on rotating assignments in community development work placement assignments and keeping track of students during the two-year academic period and the internship. (4 points)

6. *Institution's Commitment* (15 points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and economically disadvantaged students; (4 points)

b. The success of past and current efforts in preparing these students for careers in community and economic development; (6 points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3 points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for minority and economically disadvantaged students in the academic areas or the institution as a whole. (2 points)

E. Selection Factors for Area-Wide Planning Organizations/States (110 points)

The following factors will be considered by the Department in evaluating applications received from area-wide planning organizations/States in response to this NOFA. Each application must contain sufficient technical information to be reviewed for its technical merit.

1. *Academic Program* (53 points, as allocated below)

a. Relative quality of the academic program offered by the institutions of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements; (8 points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8 points) and

(3) Qualifications of the faculty at each college/university listed in the submission and the percentage of time they will teach in the academic area. (6 points)

b. Qualifications of the academic area supervisor at each college/university listed in the submission and the percentage of time they will commit to the students. (7 points)

c. The applicant's and institution's plan for the use of its facilities, equipment and financial resources in support of the CDWSP. (2 points)

d. The degree to which each college/university listed in the application is able to contribute funds to support the total cost of the project; (5 points)

e. The degree to which each college/university listed in the application will utilize faculty and staff administrators on staff; (7 points) and

f. The success rate of each institution of higher education applying under the applicant in graduating students previously enrolled in the HUD or similar work study program. (10 points)

2. *Student Work Placement Assignment* (9 points, as allocated below).

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3 points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3 points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3 points)

3. *Seminars*.

The degree to which the proposed seminars will relate to the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement. (4 points)

4. *Placement Opportunities* (13 points, as allocated below).

a. The extent to which the educational program for each college/university listed in the application (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields (6 points) and

b. The applicant's success in assisting graduates of the HUD Community Development Work Study Program (CDWSP) or similar work study program find permanent employment in community development funded agencies. (7 points)

5. *Program Coordination and Administration* (16 points, as allocated below).

a. The extent to which the applicant has establishment a committee to coordinate activities between program participants to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance; (8 points)

b. The applicant's ability to track and monitor progress of students enrolled in the program and those who drop out; (4 points) and

c. The adequacy of the applicant's plan for placing students in work placement assignments and keeping

track of students during the two-year academic period and during the internship, respectively. (4 points)

6. *Institution's Commitment* (15 points, as allocated below).

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and economically disadvantaged students; (4 points)

b. The success of past and current efforts of colleges/universities listed in the application in preparing these students for careers in community and economic development; (6 points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3 points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institutions's own financial support available for minority and economically disadvantaged students in the academic areas or the institution as a whole. (2 points)

F. Program Policy Factors

HUD may make awards out of rank order to achieve geographic diversity. If any of the ten HUD Regions has less than three (3) selected applicants after initial distribution, the selecting official may select, out of rank order, up to three of the highest ranking applications in each Region. Also, HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might recommend a lower funding level than the requested amount for tuition, work stipend, books and additional support.

G. Obtaining Application

For an application kit, contact the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Applications may be requested beginning November 23, 1992. Requests for application kits must be in writing, but may be faxed to (202) 708-3363 (This is not a toll-free number). Please refer to FR-3339, and provide your name, address including zip code) and telephone number (including area code.)

H. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for

receipt, by the deadline date and time specified in the application kit. The deadline date and time specified in the kit will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any applications that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid risk of loss of eligibility brought about by unanticipated delays or other delivery related problems. The application submission deadline contained in the application kit will be no less than 30 days after the initial date on which application kits are made available to requestors.

Following the expiration of the application submission deadline, HUD will review and rank applications in a manner consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.425. If, during this process, an application is determined to contain a deficiency involving completeness, adequacy of supporting documentation, or internal consistency, HUD will notify the applicant in writing. HUD will accept submissions to correct the deficiency for a period of 14 days from the date on the HUD notification. Applicants awarded a CDWSP grant from FY 1993 appropriations will be notified approximately 45 days after the deadline date for applications set out in the application kit.

1. *Application Consent.*

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application content that will be specified in the RFGA:

- (a) Transmittal letter.
- (b) A completed and signed Standard Form 424, Application For Federal Assistance.
- (c) Abstract.
- (d) Table of Contents.
- (e) Proposal narrative statement addressing the factors for award.
- (f) Sample copy of student/recipient binding agreement.
- (g) Sample copy of recipient/student work placement agreement.
- (h) Management/Workplan Guidelines.
- (i) Resumes of Key staff and faculty.
- (j) Budget for resident and non-resident students.
- (k) Tuition and fee schedule.
- (l) Audit/financial management system information.
- (m) Certification by IPA or cognizant audit agency of applicant's financial management system.

(n) If applicable, document verifying a 50 per cent rate of graduation of students from the FY 1990 funding round.

2. *Certifications and Exhibits.*

Applications must also include the following:

(a) Drug-Free Workplace Certification.

(b) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to 42 U.S.C. 5304 (applies only to applicants that are units of general local government).

(c) Certification on HUD Form 2880 disclosing receipt of at least \$200,000 in covered assistance during the fiscal year, pursuant to 24 CFR part 12, subpart C.

J. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

K. Other Matters

1. *Environmental Review.* An environmental Review is not required for the Community Development Work Study Program.

2. *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

3. *Impact on the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Accordingly, since

the impact on the family is beneficial, no further review is considered necessary.

4. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act HUD Responsibilities—Documentation and Public Access.

Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537 (a HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

HUD responsibilities—disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

State and unit of general local government responsibilities—disclosures. States and units of general government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years.

Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

5. Prohibition Against Advance Information on Funding Decisions.

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

6. Prohibition Against Lobbying of HUD Personnel.

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance

if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815; TDD: (202) 708-1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

7. Prohibition Against Lobbying Activities.

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

L. The Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Number is 14.234.

Authority: 42 U.S.C. 5301-5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

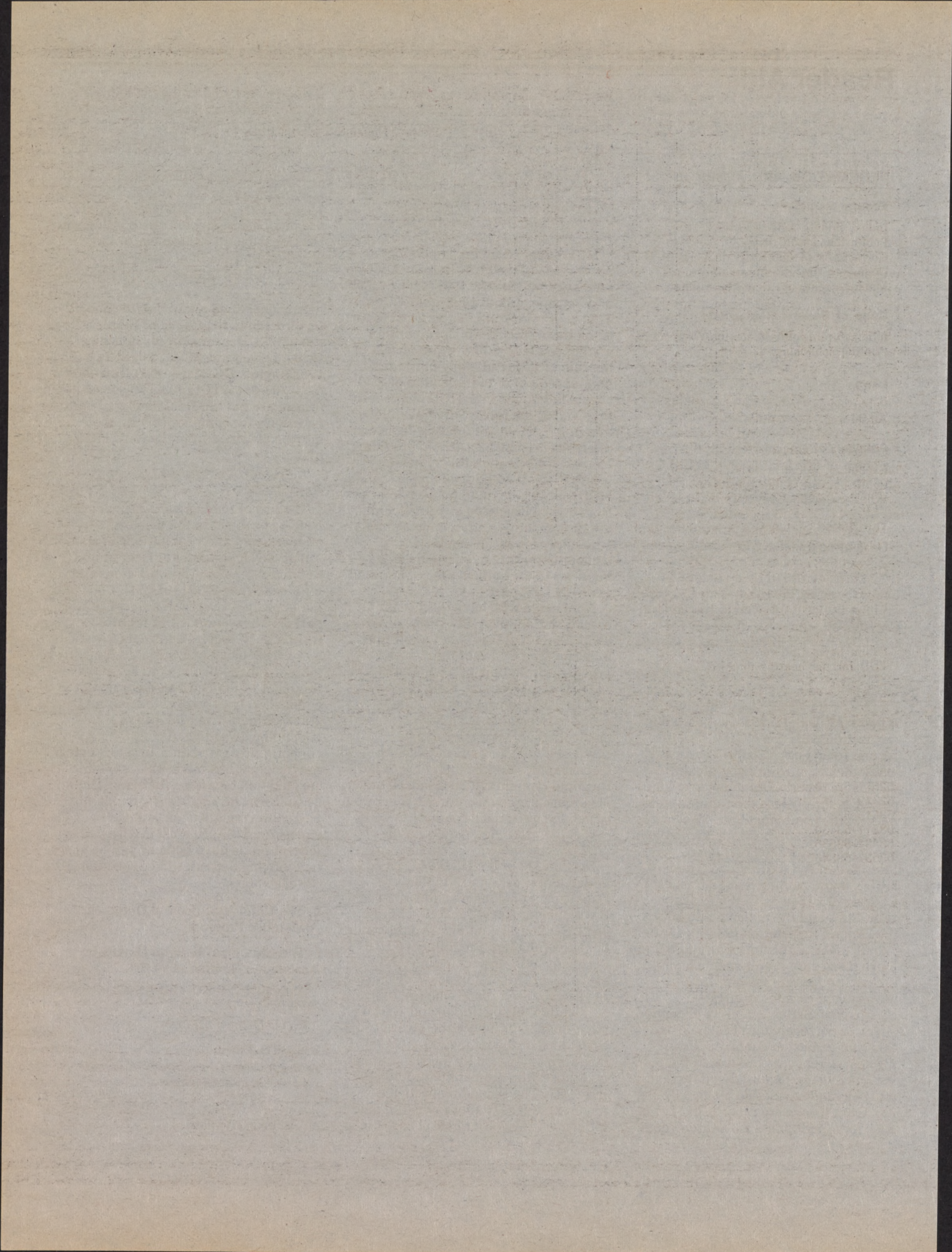
Dated: October 22, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-27420 Filed 11-10-92; 8:45 am]

BILLING CODE 4210-29-M



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H.R. 4542/P.L. 102-519

Anti Car Theft Act of 1992. (Oct. 25, 1992; 106 Stat. 3384; 18 pages) Price: \$1.00

H.R. 5862/P.L. 102-520

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to ensure an equitable and timely distribution of benefits to public safety officers. (Oct. 25, 1992; 106 Stat. 3402; 1 page) Price: \$1.00

S. 1002/P.L. 102-521

Child Support Recovery Act of 1992. (Oct. 25, 1992; 106 Stat. 3403; 7 pages) Price: \$1.00

H.R. 2042/P.L. 102-522

Fire Administration Authorization Act of 1992. (Oct. 26, 1992; 106 Stat. 3410; 15 pages) Price: \$1.00

H.R. 5419/P.L. 102-523

International Dolphin Conservation Act of 1992. (Oct. 26, 1992; 106 Stat. 3425; 9 pages) Price: \$1.00

S. 2044/P.L. 102-524

Native American Languages Act of 1992. (Oct. 26, 1992; 106 Stat. 3434; 4 pages) Price: \$1.00

S. 2890/P.L. 102-525

To provide for the establishment of the Brown v. Board of Education National Historical Site in the State of Kansas, and for other purposes. (Oct. 26, 1992; 106 Stat. 3438; 5 pages) Price: \$1.00

S. 3006/P.L. 102-526

President John F. Kennedy Assassination Records Collection Act of 1992. (Oct. 26, 1992; 106 Stat. 3443; 16 pages) Price: \$1.00

H.R. 1252/P.L. 102-527

Battered Women's Testimony Act of 1992. (Oct. 27, 1992; 106 Stat. 3459; 2 pages) Price: \$1.00

H.R. 1253/P.L. 102-528

To amend the State Justice Institute Act of 1984 to carry out research, and develop judicial training curricula, relating to child custody litigation. (Oct. 27, 1992; 106 Stat. 3461; 2 pages) Price: \$1.00

H.R. 2660/P.L. 102-529

To authorize appropriations for the United States Holocaust Memorial Council, and for other purposes. (Oct. 27, 1992; 106 Stat. 3463; 2 pages) Price: \$1.00

H.R. 3475/P.L. 102-530

Women in Apprenticeship and Nontraditional Occupations Act. (Oct. 27, 1992; 106 Stat. 3465; 4 pages) Price: \$1.00

H.R. 3635/P.L. 102-531

Preventive Health Amendments of 1992. (Oct. 27, 1992; 106 Stat. 3469; 40 pages) Price: \$1.25

H.R. 4059/P.L. 102-532

Enterprise for the Americas Initiative Act of 1992. (Oct. 27, 1992; 106 Stat. 3509; 6 pages) Price: \$1.00

H.R. 4250/P.L. 102-533

Amtrak Authorization and Development Act. (Oct. 27, 1992; 106 Stat. 3515; 9 pages) Price: \$1.00

H.R. 5716/P.L. 102-534

To extend for two years the authorizations of appropriations for certain programs under title I of the Omnibus Crime Control and Safe Streets Act of 1968. (Oct. 27, 1992; 106 Stat. 3524; 2 pages) Price: \$1.00

H.R. 5763/P.L. 102-535

To provide equitable treatment to producers of sugarcane subject to proportionate shares. (Oct. 27, 1992; 106 Stat. 3526; 2 pages) Price: \$1.00

H.R. 5853/P.L. 102-536

To designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System. (Oct. 27, 1992; 106 Stat. 3528; 3 pages) Price: \$1.00

H.R. 6022/P.L. 102-537

Ted Weiss Child Support Enforcement Act of 1992. (Oct. 27, 1992; 106 Stat. 3531; 2 pages) Price: \$1.00

H.R. 6180/P.L. 102-538

Telecommunications Authorization Act of 1992. (Oct. 27, 1992; 106 Stat. 3533; 14 pages) Price: \$1.00

H.R. 6182/P.L. 102-539

Mammography Quality Standards Act of 1992. (Oct. 27, 1992; 106 Stat. 3547; 16 pages) Price: \$1.00

H.J. Res. 503/P.L. 102-540

Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 23, 1992, as "National Military Families Recognition Day". (Oct. 27, 1992; 106 Stat. 3563; 2 pages) Price: \$1.00

S. 225/P.L. 102-541

To expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, Virginia. (Oct. 27, 1992; 106 Stat. 3565; 2 pages) Price: \$1.00

S. 759/P.L. 102-542

Trademark Remedy Clarification Act. (Oct. 27, 1992; 106 Stat. 3567; 2 pages) Price: \$1.00

S. 1664/P.L. 102-543

To establish the Keweenaw National Historical Park, and for other purposes. (Oct. 27, 1992; 106 Stat. 3569; 7 pages) Price: \$1.00

S. 2964/P.L. 102-544

Granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority. (Oct. 27, 1992; 106 Stat. 3576; 10 pages) Price: \$1.00

S. 3134/P.L. 102-545

Ready to Learn Act. (Oct. 27, 1992; 106 Stat. 3586; 4 pages) Price: \$1.00

H.R. 707/P.L. 102-546

Futures Trading Practices Act of 1992. (Oct. 28, 1992; 106 Stat. 3590; 43 pages) Price: \$1.50

H.R. 939/P.L. 102-547

Veterans Home Loan Program Amendments of 1992. (Oct. 28, 1992; 106 Stat. 3633; 13 pages) Price: \$1.00

H.R. 3598/P.L. 102-548

Intermodal Safe Container Transportation Act of 1992. (Oct. 28, 1992; 106 Stat. 3646; 5 pages) Price: \$1.00

H.R. 4996/P.L. 102-549

Jobs Through Exports Act of 1992. (Oct. 28, 1992; 106

Stat. 3651; 21 pages) Price: \$1.00

H.R. 5334/P.L. 102-550

Housing and Community Development Act of 1992. (Oct. 28, 1992; 106 Stat. 3672; 426 pages) Price: \$13.00

H.R. 5954/P.L. 102-551

An Act to amend the Food, Agriculture, Conservation, and Trade Act of 1990 to improve health care services and educational services through telecommunications, and for other purposes. (Oct. 28, 1992; 106 Stat. 4098; 4 pages) Price: \$1.00

H.R. 6125/P.L. 102-552

Farm Credit Banks and Associations Safety and Soundness Act of 1992. (Oct. 28, 1992; 106 Stat. 4102; 38 pages) Price: \$1.25

H.R. 6128/P.L. 102-553

To amend the United States Warehouse Act to provide for the use of electronic cotton warehouse receipts, and for other purposes. (Oct. 28, 1992; 106 Stat. 4140; 2 pages) Price: \$1.00

H.R. 6129/P.L. 102-554

Agricultural Credit Improvement Act of 1992. (Oct. 28, 1992; 106 Stat. 4142; 21 pages) Price: \$1.00

H.R. 6133/P.L. 102-555

Land Remote Sensing Policy Act of 1992. (Oct. 28, 1992; 106 Stat. 4163; 18 pages) Price: \$1.00

H.R. 6191/P.L. 102-556

Telephone Disclosure and Dispute Resolution Act. (Oct. 28, 1992; 106 Stat. 4181; 15 pages) Price: \$1.00

H.J. Res. 546/P.L. 102-557

Designating February 4, 1993, and February 3, 1994, as "National Women and Girls in Sports Day". (Oct. 28, 1992; 106 Stat. 4196; 2 pages) Price: \$1.00

S. 347/P.L. 102-558

Defense Production Act Amendments of 1992. (Oct. 28, 1992; 106 Stat. 4198; 29 pages) Price: \$1.00

S. 474/P.L. 102-559

Professional and Amateur Sports Protection Act. (Oct. 28, 1992; 106 Stat. 4227; 3 pages) Price: \$1.00

S. 758/P.L. 102-560

Patent and Plant Variety Protection Remedy Clarification Act. (Oct. 28, 1992; 106 Stat. 4230; 3 pages) Price: \$1.00

S. 893/P.L. 102-561

To amend title 18, United States Code, with respect to the criminal penalties for copyright infringement. (Oct. 28, 1992; 106 Stat. 4233; 1 page) Price: \$1.00

S. 1439/P.L. 102-562

To authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana, and for other purposes. (Oct. 28, 1992; 106 Stat. 4234; 3 pages) Price: \$1.00

S. 1623/P.L. 102-563

Audio Home Recording Act of 1992. (Oct. 28, 1992; 106 Stat. 4237; 12 pages) Price: \$1.00

S. 2941/P.L. 102-564

Small Business Research and Development Enhancement Act of 1992. (Oct. 28, 1992; 106 Stat. 4249; 16 pages) Price: \$1.00

S. 3309/P.L. 102-565

To amend the Peace Corps Act to authorize appropriations for the Peace Corps for fiscal year 1993 and to establish a Peace Corps foreign exchange fluctuations account, and for other purposes. (Oct. 28, 1992; 106 Stat. 4265; 4 pages) Price: \$1.00

S. 3327/P.L. 102-566

To amend the Agricultural Adjustment Act of 1938 to permit the acre-for-acre transfer of an acreage allotment or quota for certain commodities, and for other purposes. (Oct. 28, 1992; 106 Stat. 4269; 1 page) Price: \$1.00

H.R. 2130/P.L. 102-567

National Oceanic and Atmospheric Administration Authorization Act of 1992. (Oct. 29, 1992; 106 Stat. 4270; 50 pages) Price: \$1.50

H.R. 5008/P.L. 102-568

Veterans' Benefits Act of 1992. (Oct. 29, 1992; 106 Stat. 4320; 24 pages) Price: \$1.00

H.R. 5482/P.L. 102-569

Rehabilitation Act Amendments of 1992. (Oct. 29, 1992; 106 Stat. 4344; 145 pages) Price: \$4.25

H.R. 5809/P.L. 102-570

To authorize the Secretary of the Interior to construct and operate an interpretive center for the Ridgefield National Wildlife Refuge in Clark County, Washington. (Oct. 29, 1992; 106 Stat. 4489; 2 pages) Price: \$1.00

H.R. 6181/P.L. 102-571

To amend the Federal Food, Drug, and Cosmetic Act to authorize human drug application, prescription drug establishment, and prescription drug product fees and for other purposes. (Oct. 29, 1992; 106 Stat. 4491; 15 pages) Price: \$1.00

S. 1569/P.L. 102-572

Federal Courts Administration Act of 1992. (Oct. 29, 1992; 106 Stat. 4506; 20 pages) Price: \$1.00

S. 2481/P.L. 102-573

Indian Health Amendments of 1992. (Oct. 29, 1992; 106 Stat. 4526; 67 pages) Price: \$2.00

S. 2679/P.L. 102-574

Hawaii Tropical Forest Recovery Act. (Oct. 29, 1992; 106 Stat. 4593; 7 pages) Price: \$1.00

H.R. 429/P.L. 102-575

Reclamation Projects Authorization and Adjustment Act of 1992. (Oct. 30, 1992; 106 Stat. 4600; 170 pages) Price: \$5.00

H.R. 2032/P.L. 102-576

Nez Perce National Historical Park Additions Act of 1991. (Oct. 30, 1992; 106 Stat. 4770; 2 pages) Price: \$1.00

H.J. Res. 422/P.L. 102-577

Designating November 1992 as "Neurofibromatosis Awareness Month". (Oct. 30, 1992; 106 Stat. 4772; 2 pages) Price: \$1.00

S. 775/P.L. 102-578

Veterans' Radiation Exposure Amendments of 1992. (Oct. 30, 1992; 106 Stat. 4774; 3 pages) Price: \$1.00

S. 1671/P.L. 102-579

Waste Isolation Pilot Plant Land Withdrawal Act. (Oct. 30, 1992; 106 Stat. 4777; 20 pages) Price: \$1.00

H.R. 6167/P.L. 102-580

Water Resources Development Act of 1992. (Oct. 31, 1992; 106 Stat. 4797; 75 pages) Price: \$2.25

H.R. 6168/P.L. 102-581

Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992. (Oct. 31, 1992; 106 Stat. 4872; 28 pages) Price: \$1.00

H.R. 2152/P.L. 102-582

High Seas Driftnet Fisheries Enforcement Act. (Nov. 2, 1992; 106 Stat. 4900; 14 pages) Price: \$1.00

H.R. 6187/P.L. 102-583

International Narcotics Control Act of 1992. (Nov. 2, 1992;

106 Stat. 4914; 23 pages)

Price: \$1.00

S. 2572/P.L. 102-584

Arkansas-Idaho Exchange Act of 1992. (Nov. 2, 1992; 106 Stat. 4937; 6 pages) Price: \$1.00

H.R. 5193/P.L. 102-585

Veterans Health Care Act of 1992. (Nov. 4, 1992; 106 Stat. 4943; 39 pages) Price: \$1.25

H.R. 5194/P.L. 102-586

To amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes. (Nov. 4, 1992; 106 Stat. 4982; 57 pages) Price: \$1.75

H.R. 5617/P.L. 102-587

Oceans Act of 1992. (Nov. 4, 1992; 106 Stat. 5039; 68 pages) Price: \$2.00

H.R. 6135/P.L. 102-588

National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993. (Nov. 4, 1992; 106 Stat. 5107; 26 pages) Price: \$1.00

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